

ESCROW MANAGEMENT AGREEMENT

THIS ESCROW MANAGEMENT AGREEMENT, dated as of _____, 2025 ("Escrow Agreement" or "Agreement"), is by and among KSE ELITCH GARDENS / REVESCO / SECOND CITY, LLLP, a Colorado limited liability limited partnership ("Developer"); CITY AND COUNTY OF DENVER, Colorado, a home rule municipality ("City"). Developer and the City are sometimes referred to herein as a "Party", and collectively, the "Parties".

BACKGROUND

A. The City and Developer entered into the River Mile Rezoning Development Agreement with an "Effective Date" of December 20, 2018, and recorded in the Denver Clerk and Recorder's Office on December 15, 2019, at Reception Number 2019170892, as amended, ("Development Agreement") related to the development of certain real property in downtown Denver (the "Project").

B. In the Development Agreement, the Parties agreed to an Affordable Housing Plan ("AHP") for the Project that detailed Developer's compliance with City and County of Denver affordable housing requirements pertaining to the Project.

C. The AHP (as defined below) details that Developer must pay all applicable Linkage Fees defined by and required pursuant to Chapter 27, Article V, Division 2 of the Denver Revised Municipal Code at the time of building permit issuance for certain structures to access maximum height incentives and that such Linkage Fees, during the Escrow Period (as defined below), shall be considered the River Mile Affordable Housing Fee made available for Developer for the purpose of constructing Income Restricted Units but only to the extent defined by and detailed in the AHP. To implement the terms of the AHP, the Parties enter into this Escrow Agreement.

D. The Parties agree to deposit the required funds with the Colorado Local Government Liquid Asset Trust, also referred to as Colotrust. Colotrust has agreed to accept, hold, and disburse the funds deposited with it and the earnings thereon in accordance with the terms of this Escrow Agreement.

E. Developer and City have appointed the Representatives (as defined below) to represent them for all purposes in connection with the funds to be deposited with Colotrust and this Escrow Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. **Definitions**. As between the Developer and the City, terms not defined herein shall have the meanings defined in the AHP. The following terms shall have the following meanings when used herein:

- a. “AHP” means Developer’s affordable housing plan which satisfies the requirements of the Mandatory Affordable Housing Ordinance as a contracted commitment enforceable by the City thereby permitting Developer to access height incentives within the CPV Zone District in accordance with Denver Zoming Code Section 8.9.5.5, by delivering affordable housing units or paying the required Linkage Fees, as applicable, within the Project. The AHP is incorporated by reference and attached as **Exhibit B**.
- b. “Colotrust” shall refer to the Colorado Local Government Liquid Asset Trust, originally created by an Indenture of Trust pursuant to the provisions of Part 7 of Article 75 of Title 24, Colorado Revised Statutes.
- c. “City Representative” shall mean the HOST Representative or the City’s Chief Financial Officer
- d. “Compliance Report” shall mean the report prepared and submitted by Developer demonstrating progress in meeting compliance of the AHP in the form attached hereto as **Exhibit D**, and as further discussed in Section 8 of the AHP. A “Compliance Report” shall have the same meaning as a “Compliance Phase Plan”, as described in Section 10 of the AHP.
- e. “Developer Representative” shall mean the person(s) so designated on the Draw Request Certificate attached hereto as **Exhibit C** or any other person designated in a writing signed by Developer and delivered to the City Representative in accordance with the notice provisions of this Escrow Agreement, to act as its representative under this Escrow Agreement.
- f. “Draw Request Certificate(s)” shall mean a written direction executed by the Parties allowing for the disbursement of all or a portion of the Funds or to take

or refrain from taking any other action pursuant to this Escrow Agreement. The Forms of Draw Request Certificate(s) are attached hereto as **Exhibit C**.

- g. "DRMC" shall mean the Denver Revised Municipal Code.
- h. "Escrow Account" shall mean the account, with Colotrust, establish to hold the Funds.
- i. "Escrow Agent" shall mean Colotrust, or successor Agent, as determined by the City and County of Denver.
- j. "Escrow Period" shall mean the period commencing on the date hereof and ending on December 20, 2038, unless earlier terminated pursuant to this Escrow Agreement.
- k. "Funds" shall mean the funds deposited with Colotrust as required by the AHP and pursuant to Section 2 of this Agreement, together with any interest and other income thereon.
- l. "HOST" shall mean the Mayor's Department of Housing Stability of the City and County of Denver, or successor agency.
- m. "HOST Representative" shall mean Executive Director of the Office of Housing Stability, or the Director's designee, who is empowered to act on the City's behalf in accordance with the provisions of this Escrow Management Agreement.
- n. "Linkage Fee(s)" means the affordable housing linkage fee(s) that is/are assessed pursuant to Chapter 27, Article V of the DRMC, as may be amended from time to time and as required by the AHP.
- o. "Project" shall mean the development of the Property.
- p. "Property" shall mean that certain real property legally described on **Exhibit A**.
- q. "Representatives" shall mean the Developer Representative and the City Representative.
- r. "River Mile Affordable Housing Fee" shall have the meaning set forth in the AHP and shall be the same as the Linkage Fee.

2. Deposit and Purpose of Funds. The AHP provides that the Parties will enter into this Escrow Agreement and that Developer shall remit to City the required Linkage Fee pursuant

to Chapter 27, Article V of the DRMC. In accordance with the AHP, the City shall deposit into the Escrow Account the River Mile Affordable Housing Fee for the purpose of financing of any Income-Restricted Units within the Project. Further, Developer may only request use of a maximum amount of One Hundred Thousand Dollars (\$100,000.00) of the Funds for Income-Restricted Units within the project, as such amount is adjusted annually by 3%.

3. Colotrust as Funds Holder. Developer and City hereby agree to deposit the Funds that are the subject of this Escrow Agreement in an account with Colotrust. City agrees to open a special escrow account designated “AHP River Mile Escrow Account (the “Escrow Account”) to be held and administered by Colotrust for the benefit of the Developer and the City in accordance with this Escrow Agreement. Money may only be withdrawn from the account in the manner and as prescribed in this Escrow Agreement. Neither Party may withdraw money individually from the account. Both parties shall have access to view account balance and receive statements

4. Disbursement of Funds. Colotrust, through the City, shall disburse amounts from the Escrow Account at any time and from time to time, upon receipt of, and in accordance with, a properly and fully executed and approved Draw Request Certificate substantially in the forms attached hereto in Exhibit C (as so executed and accepted, a “Draw”). Each Draw Request Certificate must (i) contain information on how the monies will be spent; (ii) shall be subject to the approval of the Executive Director of the City’s Department of Housing Stability or the City’s Chief Financial Officer, based on the requirements of this Agreement; (iii) must be accompanied by a detailed AHP Progress Report; and (iv) must certify that the Developer is compliant with the terms of the AHP. Colotrust shall have no obligation to review any receipt or other document attached to any Draw. The City agrees to review the Draw Request Certificate from the Developer within ten (10) business days of receipt of such request. If the Draw Request Certificate is complete and sufficient funds are deposited in the Escrow Account, the City Representative will sign the Draw Request Certificate and initiate the process to withdraw the amount requested and transfer that amount to Developer. Requests for funds may be made electronically. The City Representative shall promptly notify the Developer Representative when the Draw Request Certificate has been submitted and shall advise the Developer Representative on the anticipated date of delivery of the Funds, which shall be delivered via a wire per Developer Representative’s written instructions. If the City Representative deems the Draw Request Certificate to be insufficient or incomplete, the City Representative shall immediately notify the Developer of same so that the Draw Request

Certificate may be revised, if needed, and resubmitted in a timely manner.

5. Remaining Funds. If, at the termination of the Escrow Period, Developer has not utilized all of the Funds in escrow in accordance herewith, all Funds remaining in the Escrow Account will promptly be paid directly to the City for deposit into the City's "Affordable Housing Linkage Fee Revenue Fund" or otherwise, for use by the City for affordable housing-related purposes.

6. Interest Accrued on Escrow Account. Notwithstanding anything to the contrary set forth herein, any interest that accrues on the Funds will be used to pay fees and charges incurred as a result of opening, maintaining, transacting, and eventually closing the Escrow Account.

7. Fees and Expenses. Developer and City agree to pay any fees and costs uncured on the Escrow Account with accrued interest on the Funds, as described in Section 6.

8. Compliance Report. Notwithstanding anything to the contrary set forth herein, it is expressly understood that the form of Compliance Report may be amended, altered or otherwise changed by mutual agreement of the Parties without the need to amend this Agreement to ensure such Compliance Report can accurately reflect the long-term, fluid nature of the Project and the acknowledgement of future, planned Income Restricted Units will be the basis to achieve compliance with the AHP.

9. Binding Effect; Successors. This Escrow Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors or assigns.

10. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, Colotrust may require documentation to verify its formation and existence as a legal entity. Colotrust may ask to see financial statements, licenses, identification, and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Parties acknowledge that a portion of the identifying information set forth herein may be requested by the Colotrust in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and each agrees to provide any additional information requested by Colotrust in connection with the Act or any other legislation or regulation to which Colotrust is subject, in a timely manner.

11. Consent to Jurisdiction and Venue. In the event that any party hereto commences

a lawsuit or other proceeding relating to or arising from this Escrow Agreement, the parties hereto agree to the personal jurisdiction by and venue in the state and federal courts in the State of Colorado and waive any objection to such jurisdiction or venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein and agree to accept service of process to vest personal jurisdiction over them in any of these courts.

12. Notices. All notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be delivered (i) by personal delivery, or (ii) by national overnight courier service, or (iii) by certified or registered mail, return receipt requested, or (iv) via facsimile transmission, with confirmed receipt or (v) via email by way of a PDF attachment thereto of a manually or electronically executed document. Notice shall be effective upon receipt except for notice via email, which shall be effective only when the recipient, by return email or notice delivered by other method provided for in this Section 12, acknowledges having received that email (with an automatic “read receipt” or similar notice not constituting an acknowledgement of an email receipt for purposes of this Section 12.) Such notices shall be sent to the applicable party or parties at the address specified below:

If to Developer or Developer Representative at:

KSE Elitch Gardens / Revesco / Second City, LLLP
Revco Properties
Rhys Duggan
2731 17th Street, Suite 300
Denver, CO 80211

Kroenke Arena Company, LLC & Kroenke Parking, LLC
Mike Neary, EVP, Business & Operations
1000 Chopper Circle
Denver, CO 80204

Kroenke Arena Company, LLC & Kroenke Parking, LLC
Matt Mahoney, SVP Projects & Development
1000 Chopper Circle
Denver, CO 80204

Kroenke Arena Company, LLC & Kroenke Parking, LLC
Keirstin Beck, EVP, General Counsel
1000 Chopper Circle
Denver, CO 80204

If to City or City Representative at:

Director of HOST
City and County of Denver, Colorado
201 West Colfax, Dept. 204
Denver, Colorado 80202

With copies to:
Manager of Finance
City and County of Denver, Colorado
201 West Colfax, Dept. 1004
Denver, Colorado 80202

Telephone: (720) 913-9370
Facsimile: (720) 913-9784
E-mail: cashand.investmentadministration@denvergov.org

And

Denver City Attorney's Office
Municipal Operations Section
201 West Colfax Ave. Dept.1207
Denver, Colorado 80202

or to such other address as each party may designate for itself by like notice and unless otherwise provided herein shall be deemed to have been given on the date received.

13. Amendment, Waiver and Assignment. None of the terms or conditions of this Escrow Agreement may be changed, waived, modified, discharged, terminated or varied in any manner whatsoever unless in writing duly signed by each party to this Escrow Agreement. No course of conduct shall constitute a waiver of any of the terms and conditions of this Escrow Agreement, unless such waiver is specified in writing, and then only to the extent so specified. A waiver of any of the terms and conditions of this Escrow Agreement on one occasion shall not constitute a waiver of the other terms of this Escrow Agreement, or of such terms and conditions on any other occasion. This Escrow Agreement may not be assigned by any party without the written consent of the other parties.

14. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

15. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the State of Colorado without giving effect to the conflict of laws principles thereof.

16. No Discrimination in Employment. In connection with the performance of work under the Agreement, the Escrow Agent may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, gender variance, sexual orientation, gender variance, marital status, protective hairstyle, or physical or mental disability. The Parties shall insert the foregoing provision in all subcontracts.

17. Entire Agreement, No Third-Party Beneficiaries. This Escrow Agreement constitutes the entire agreement between the parties relating to the holding, investment and disbursement of the Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Funds. Nothing in this Escrow Agreement, express or implied, is intended to or shall confer upon any other person, including any recipient Affordable Housing Provider, any right, benefit or remedy of any nature whatsoever under or by reason of this Escrow Agreement.

18. Execution in Counterparts, Electronic Transmission. This Escrow Agreement and any Draw Request Certificate(s) may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction. The delivery of copies of this Escrow Agreement and any Draw Request Certificate and their respective signature pages by PDF or electronic transmission shall constitute effective execution and delivery as to the parties and may be used in lieu of originals for all purposes.

19. Termination. This Escrow Agreement shall terminate upon the expiration of the Escrow Period, and Escrow Agent shall thereafter have no further obligation or liability whatsoever with respect to this Escrow Agreement or the Funds. Escrow Agent shall provide a notice of final distribution and termination to Developer and the City.

20. Brokerage Confirmation Waiver. Developer and City acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant either the right to receive brokerage confirmations for certain security transactions as they occur, Developer and City specifically waive receipt of such confirmations to the extent permitted by law. Colotrust will furnish periodic cash transaction statements that include detail for all

transactions made on the account and will be available for the Parties to view.

21. Tax Reporting. Colotrust shall have no responsibility for the tax consequences of this Escrow Agreement and Developer and City shall consult with independent counsel concerning any and all tax matters.

22. Publicity. No party will (a) use any other party's proprietary indicia, trademarks, service marks, trade names, logos, symbols, or brand names, or (b) otherwise refer to or identify any other party in advertising, publicity releases, or promotional or marketing publications, or correspondence to third parties without, in each case, securing the prior written consent of such other party.

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

24. When Rights and Remedies Not Waived. In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Developer. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

25. Defense and Indemnification.

a. The Developer hereby agrees to defend, indemnify, reimburse and hold

harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Developer or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

- b. The Developer’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim. The Developer’s duty to defend and indemnify the City shall arise even if the City is the only party sued by claimant and/or claimant alleges that the City’s negligence or willful misconduct was the sole cause of claimant’s damages.
- c. The Developer shall defend any and all Claims which may be brought or threatened against the City and shall pay on behalf of the 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 the City will be in addition to any other legal remedies available to the City and will not be the City’s exclusive remedy.
- d. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Developer under the terms of this indemnification obligation. The Developer is responsible to 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 termination of this Agreement.

26. Colorado Governmental Immunity Act. In relation to this Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

27. Disputes. All disputes between the City and the Developer arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by § 56-106(b)-(f), D.R.M.C. For the purposes of that administrative procedure, the City official rendering a final determination shall be the Director as defined in this Agreement.

28. Legal Authority. The Developer represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of the Developer represents and warrants that he has been fully authorized by the Developer to execute this Agreement on behalf of the Developer and to validly and legally bind the Developer to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Developer or the person signing this Agreement to enter into this Agreement.

29. No Construction Against Drafting Party. The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any Party merely because any provisions of this Agreement were prepared by a particular Party.

30. Order of Precedence. In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.

31. Compliance with Denver Wage Laws. To the extent applicable to the Developer's provision of Services hereunder, the Developer shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Developer expressly acknowledges that the Developer is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Developer, or any other individual or entity acting subject to this Agreement,

to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

32. Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures by the City and Developer. The Escrow Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and Developer in the manner specified by the Parties. The Parties agree not to deny the legal effect or enforceability of the Escrow 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 Escrow 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.

Exhibit List:

Exhibit A: Legal Description of Property

Exhibit B: Affordable Housing Plan

Exhibit C: Draw Request Certificate

Exhibit D: Compliance Report

[Remainder of page left intentionally blank.]

Contract Control Number: HOST-202580519-00
Contractor Name: KSE ELITCH GARDENS, LLLP

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:

Attorney for the City and County of Denver

By:

REGISTERED AND COUNTERSIGNED:

By:

By:

Contract Control Number: HOST-202580519-00
Contractor Name: KSE ELITCH GARDENS, LLLP

Signed by:
By: 
064117D0808A4E0...

Name: Mike Neary
(please print)

Title: Executive Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A
Legal Description of Property

EXHIBIT A
DESCRIPTION
“THE RIVER MILE ZONE DISTRICT 1”

A PORTION OF “PARCEL ONE” DESCRIBED IN SPECIAL WARRANTY DEED RECORDED AT RECEPTION NO. 2015075788 IN THE OFFICIAL RECORD’S OF THE CLERK AND RECORDER’S OFFICE OF THE CITY AND COUNTY OF DENVER, STATE OF COLORADO SITUATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID CITY, COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 33;

THENCE NORTH 00°17'33" WEST ALONG THE WESTERLY LINE OF SAID SECTION 33, A DISTANCE OF 1,204.77 FEET;

THENCE NORTH 89°42'27" EAST, A DISTANCE OF 29.09 FEET TO A POINT ON THE EASTERLY BOUNDARY OF THE OFFICIAL CHANNEL OF THE SOUTH PLATTE RIVER;

THENCE ALONG SAID EASTERLY BOUNDARY AND THE EASTERLY BOUNDARY SAID OF “PARCEL ONE” THE FOLLOWING THREE (3) COURSES

1. NORTH 49°18'33" EAST, A DISTANCE OF 35.80;
2. NORTH 49°17'28" EAST, A DISTANCE 51.13 FEET; FEET
3. NORTH 26°03'32" EAST, A DISTANCE OF 102.28 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID EASTERLY BOUNDARY’S THE FOLLOWING ELEVEN (11) COURSES:

1. NORTH 26°03'32" EAST, A DISTANCE OF 26.07 FEET;
2. NORTH 03°59'21" EAST, A DISTANCE OF 1,368.41 FEET;
3. NORTH 05°09'08" EAST, A DISTANCE OF 197.04 FEET;
4. NORTH 06°45'17" EAST, A DISTANCE OF 207.24 FEET;
5. NORTH 12°44'41" EAST, A DISTANCE OF 172.09 FEET;
6. NORTH 19°57'15" EAST, A DISTANCE OF 84.53 FEET;
7. NORTH 32°48'13" EAST, A DISTANCE OF 74.95 FEET;
8. NORTH 58°08'17" EAST, A DISTANCE OF 61.39 FEET;
9. NORTH 78°06'31" EAST, A DISTANCE OF 63.81 FEET;
10. NORTH 64°51'34" EAST, A DISTANCE OF 70.84 FEET;
11. NORTH 45°54'47" EAST, A DISTANCE OF 1,027.02 FEET TO THE SOUTHERLY BOUNDARY OF DEED RECORDED AT BOOK 2082, PAGE 210 IN SAID OFFICIAL RECORDS;

THENCE ALONG SAID SOUTHERLY BOUNDARY AND THE NORTHERLY BOUNDARY OF SAID “PARCEL ONE” THE FOLLOWING TWO (2) COURSES:

1. SOUTH 72°28'28" EAST, A DISTANCE OF 31.77 FEET;

2. NORTH 81°34'57" EAST, A DISTANCE OF 418.54 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY OF ELITCH CIRCLE;

THENCE ALONG SAID NORTHWESTERLY RIGHT-OF-WAY AND THE SOUTHWESTERLY RIGHT-OF-WAY OF ELITCH CIRCLE THE FOLLOWING TWO (2) COURSES:

1. SOUTH 43°51'28" WEST, A DISTANCE OF 332.74 FEET;
2. SOUTH 46°08'32" EAST, A DISTANCE OF 40.00 FEET;

THENCE DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY SOUTH 43°51'28" WEST, A DISTANCE OF 1645.71 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 70.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 109.96 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 46°08'32" EAST, A DISTANCE OF 214.17 FEET;

THENCE SOUTH 43°51'28" WEST, A DISTANCE OF 35.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 330.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°42'29", AN ARC LENGTH OF 263.26 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 330.00 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 27°19'12", AN ARC LENGTH OF 157.35 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1,361.20 FEET;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°04'36", AN ARC LENGTH OF 572.00 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 330.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 49°59'56", AN ARC LENGTH OF 287.97 FEET;

THENCE SOUTH 51°23'31" WEST, A DISTANCE OF 35.10 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 20.456 ACRES, (891,081 SQUARE FEET), MORE OR LESS.

EXHIBIT A
DESCRIPTION
"THE RIVER MILE ZONE DISTRICT 2"

A PORTION OF "PARCEL ONE" DESCRIBED IN SPECIAL WARRANTY DEED RECORDED AT RECEPTION NO. 2015075788 IN THE OFFICIAL RECORD'S OF THE CLERK AND RECORDER'S OFFICE OF THE CITY AND COUNTY OF DENVER, STATE OF COLORADO ALL SITUATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID CITY, COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 33;

THENCE NORTH 00°17'33" WEST ALONG THE WESTERLY LINE OF SAID SECTION 33, A DISTANCE OF 1,204.77 FEET;

THENCE NORTH 89°42'27" EAST, A DISTANCE OF 29.09 FEET TO A POINT ON THE EASTERLY BOUNDARY OF THE OFFICIAL CHANNEL OF THE SOUTH PLATTE RIVER;

THENCE ALONG SAID EASTERLY BOUNDARY NORTH 49°18'33" EAST, A DISTANCE OF 35.80 TO THE EASTERLY BOUNDARY SAID OF "PARCEL ONE" AND THE **POINT OF BEGINNING**;

THENCE ALONG SAID LAST DESCRIBED EASTERLY BOUNDARY THE FOLLOWING TWO (2) COURSES

4. NORTH 49°17'28" EAST, A DISTANCE 51.13 FEET;
5. NORTH 26°03'32" EAST, A DISTANCE OF 102.28 FEET;

THENCE DEPARTING SAID EASTERLY BOUNDARY NORTH 51°23'31" EAST, A DISTANCE OF 35.10 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 330.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 49°59'56", AN ARC LENGTH OF 287.97 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1361.20 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 24°04'36", AN ARC LENGTH OF 572.00 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY HAVING A RADIUS OF 330.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 27°19'12", AN ARC LENGTH OF 157.35 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 330.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°42'29", AN ARC LENGTH OF 263.26 FEET;

THENCE NORTH 43°51'28" EAST, A DISTANCE OF 35.00 FEET;

THENCE NORTH 46°08'32" WEST, A DISTANCE OF 214.17 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 70.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 109.96 FEET;

THENCE NORTH 43°51'28" EAST, A DISTANCE OF 1,645.67 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY OF ELITCH CIRCLE

THENCE ALONG THE SOUTHWESTERLY, SOUTHEASTERLY, NORTHEASTERLY AND NORTHWESTERLY RIGHT-OF-WAY OF ELITCH CIRCLE THE FOLLOWING EIGHT (8) COURSES:

1. SOUTH 46°08'32" EAST, A DISTANCE OF 334.17 FEET;
2. NORTH 43°51'28" EAST, A DISTANCE OF 377.40 FEET;
3. NORTH 46°08'32" WEST, A DISTANCE OF 100.00 FEET;
4. SOUTH 43°51'28" WEST, A DISTANCE OF 297.40 FEET;
5. NORTH 46°08'32" WEST, A DISTANCE OF 194.17 FEET;
6. NORTH 43°51'28" EAST, A DISTANCE OF 356.15 FEET;
7. NORTH 81°34'57" EAST, A DISTANCE OF 4.26 FEET;
8. NORTH 46°58'33" EAST, A DISTANCE OF 276.55 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SPEER BOULEVARD, THE MOST NORTHERLY CORNER OF SAID "PARCEL ONE" AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1,123.24 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 46°50'38" WEST;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY AND THE NORTHERLY BOUNDARY OF SAID "PARCEL ONE" THE FOLLOWING FIVE (5) COURSES:

1. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 03°56'35", AN ARC LENGTH OF 77.30 FEET;
2. NORTH 50°47'13" EAST, A DISTANCE OF 35.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1,158.24 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 50°47'13" WEST;
3. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°00'32", AN ARC LENGTH OF 222.55 FEET;
4. SOUTH 28°12'15" EAST, A DISTANCE OF 16.37 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1388.24 FEET;
5. SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°51'11", AN ARC LENGTH OF 287.19 FEET TO THE WESTERLY RIGHT-OF-WAY OF THE BURLINGTON NORTHERN AND SANTA FE RAILROAD AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 1,671.36 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 52°17'22" EAST;

THENCE ALONG SAID WESTERLY RIGHT-OF-WAY AND THE EASTERLY BOUNDARY OF SAID "PARCEL ONE" THE FOLLOWING FIVE (5) COURSES:

1. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°36'58", AN ARC LENGTH OF 193.00 FEET;
2. SOUTH 31°05'40" WEST, A DISTANCE OF 311.92 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 1128.08 FEET;
3. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 28°37'34", AN ARC LENGTH OF 563.61 FEET;

4. SOUTH 59°43'14" WEST, A DISTANCE OF 941.41 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1328.70 FEET;
5. THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 91°47'02", AN ARC LENGTH OF 2,128.49 FEET;

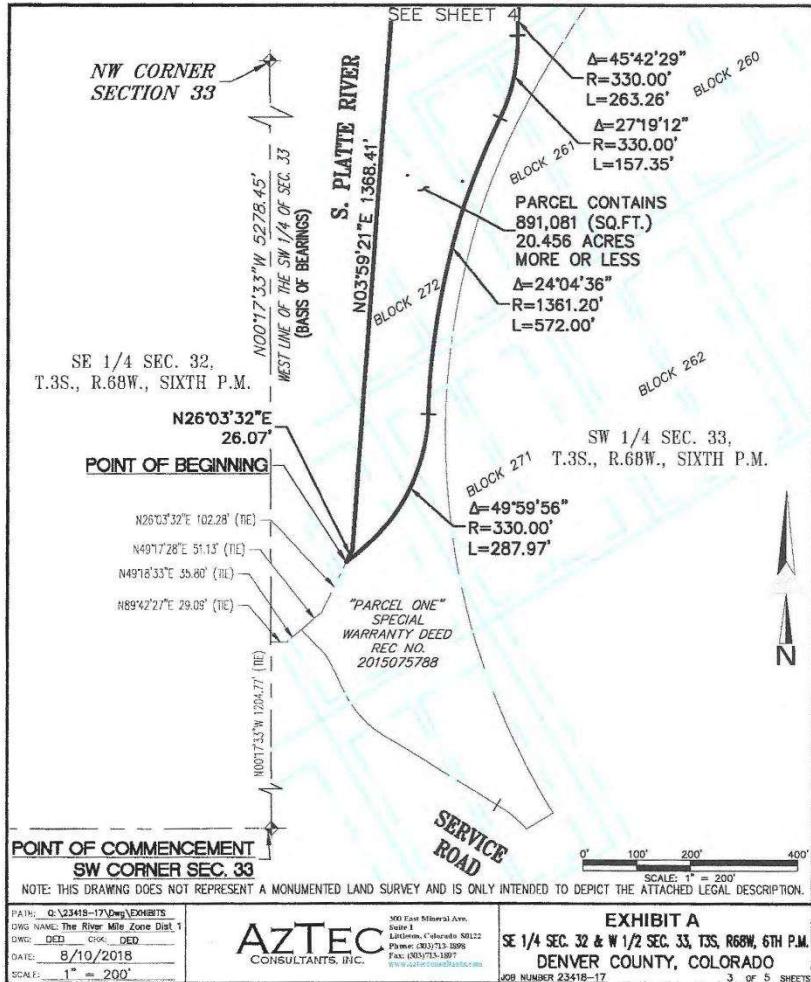
THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY ALONG THE SOUTHERLY AND WESTERLY BOUNDARY OF SAID "PARCEL ONE" THE FOLLOWING SEVEN (7) COURSES:

1. SOUTH 59°29'56" WEST, A DISTANCE OF 58.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 256.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 47°07'13" WEST;
2. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°49'36", AN ARC LENGTH OF 70.71 FEET;
3. NORTH 58°42'23" WEST, A DISTANCE OF 247.73 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 193.00 FEET;
4. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 33°33'38", AN ARC LENGTH OF 113.05 FEET;
5. NORTH 25°08'45" WEST, A DISTANCE OF 48.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 134.36 FEET;
6. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19°03'05", AN ARC LENGTH OF 44.68 FEET;
7. NORTH 44°11'50" WEST, A DISTANCE OF 47.49 FEET TO THE POINT OF BEGINNING.

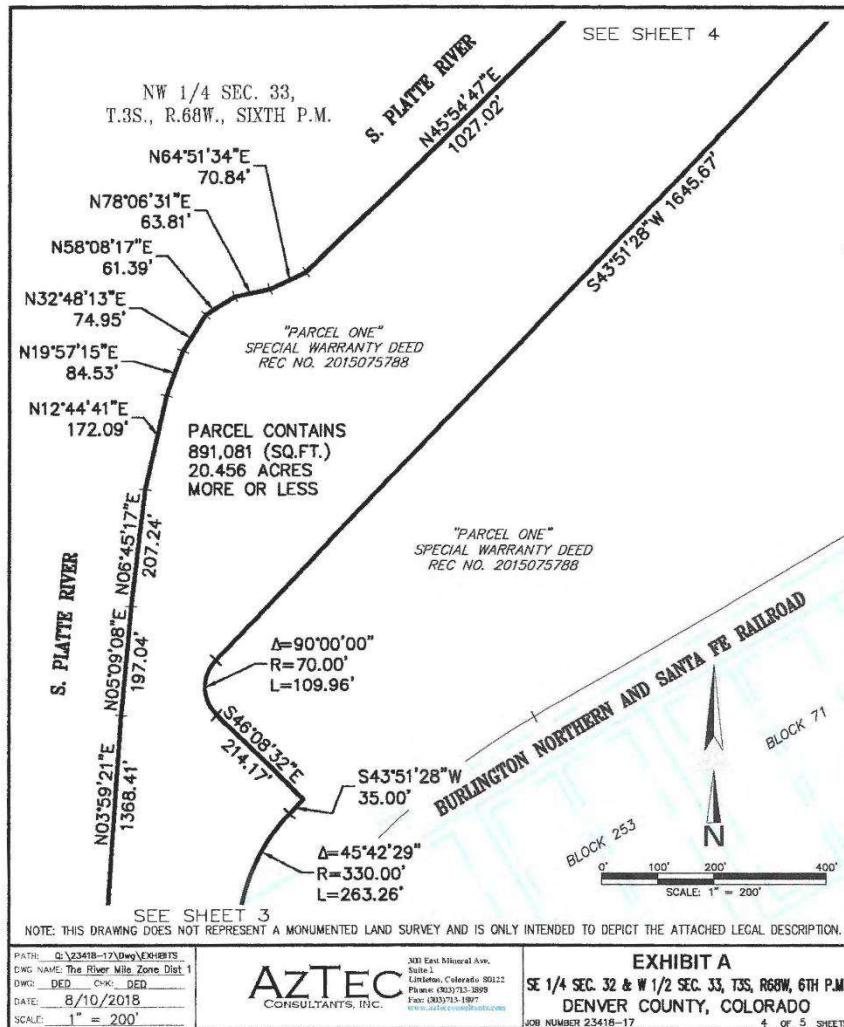
CONTAINING AN AREA OF 37.772 ACRES, (1,645,340 SQUARE FEET), MORE OR LESS.

DANIEL E. DAVIS, PLS 38256
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

**THE RIVER MILE ZONE DISTRICT 1
ILLUSTRATION TO DESCRIPTION**



**THE RIVER MILE ZONE DISTRICT 1
ILLUSTRATION TO DESCRIPTION**



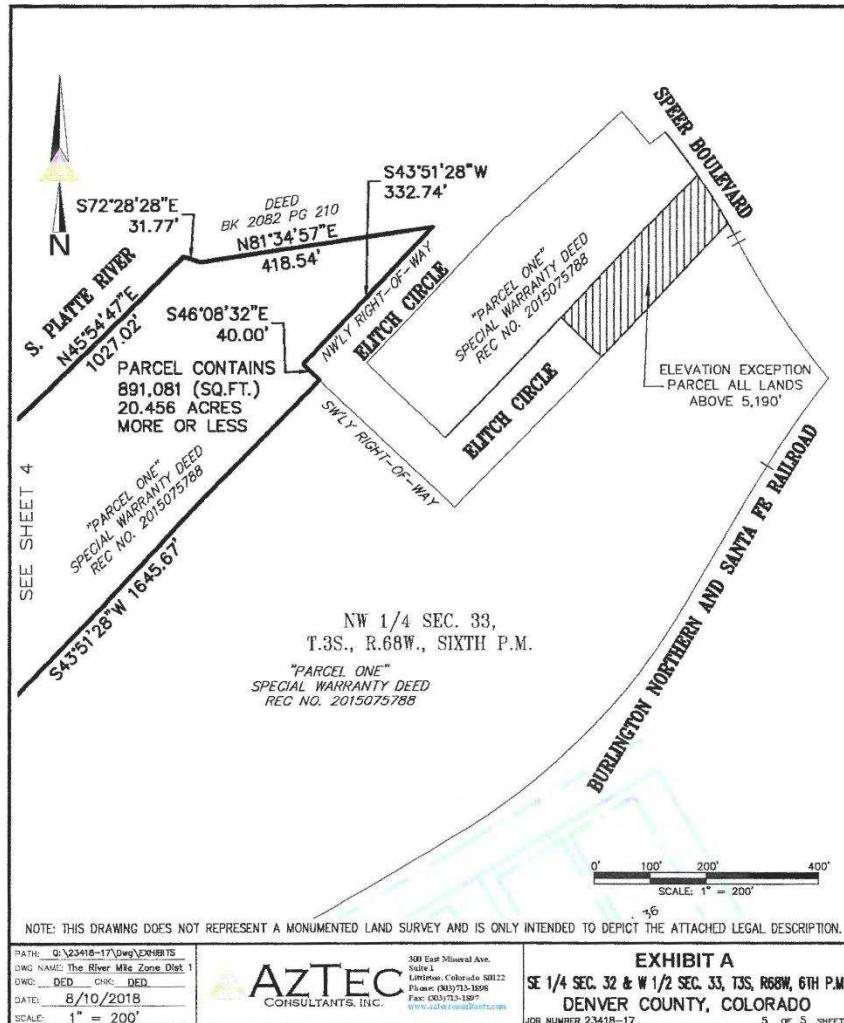
SEE SHEET 3
NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: Q:\23418-17\DWG\EXHIBITS
DWG NAME: The River Mile Zone Dist
DWG: DED C/H: DED
DATE: 8/10/2018
SCALE: 1" = 200'

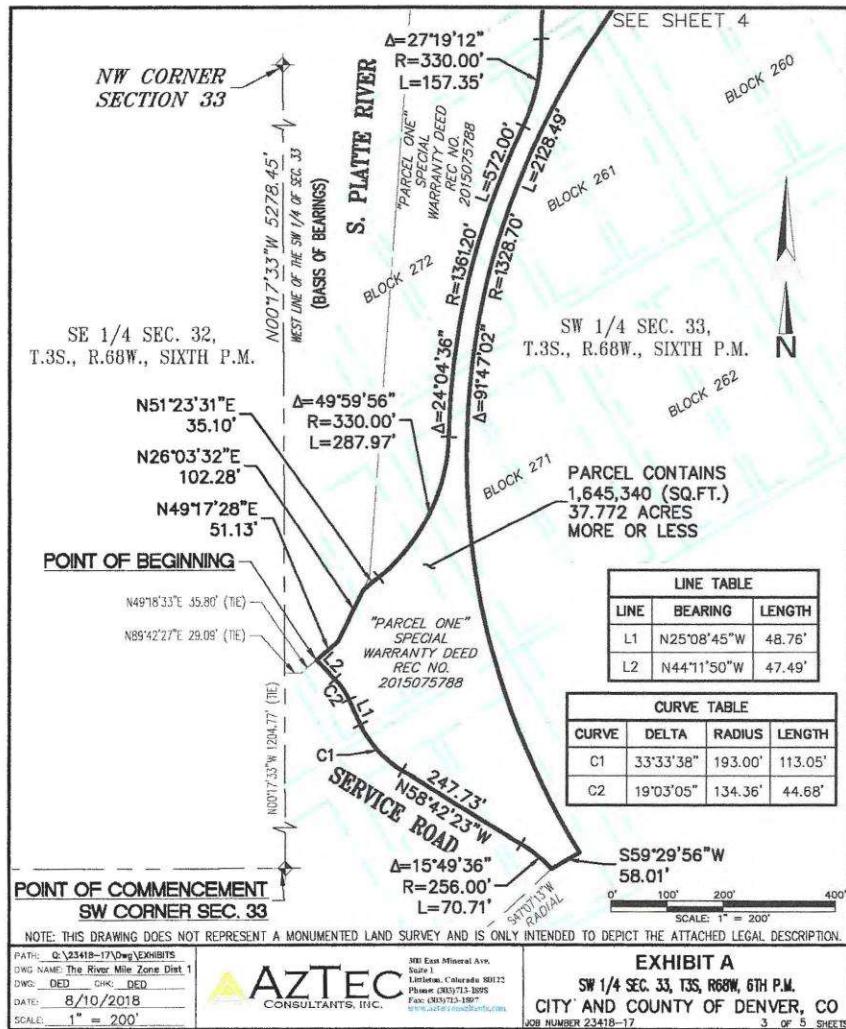
Aztec Consultants Inc.

EXHIBIT A
SE 1/4 SEC. 32 & W 1/2 SEC. 33, T3S, R68W, 6TH P.M.
DENVER COUNTY, COLORADO

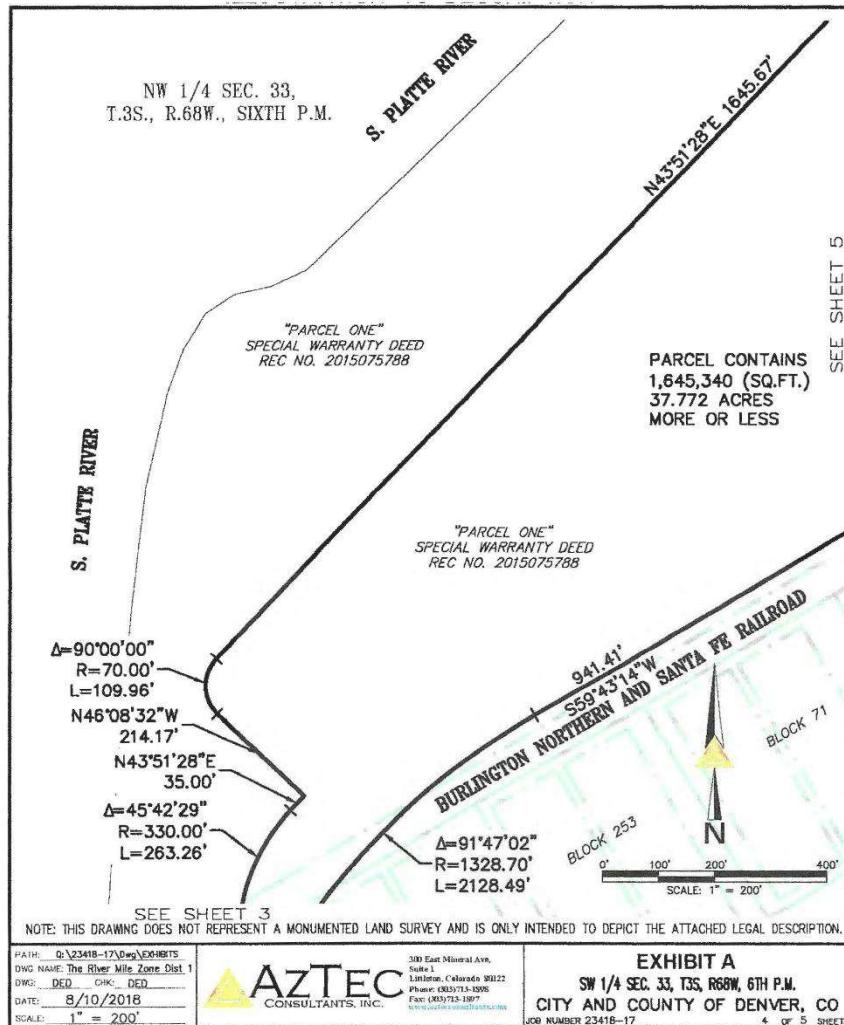
THE RIVER MILE ZONE DISTRICT 1
ILLUSTRATION TO DESCRIPTION



**THE RIVER MILE ZONE DISTRICT 2
ILLUSTRATION TO DESCRIPTION**



**THE RIVER MILE ZONE DISTRICT 2
ILLUSTRATION TO DESCRIPTION**



**THE RIVER MILE ZONE DISTRICT 2
ILLUSTRATION TO DESCRIPTION**

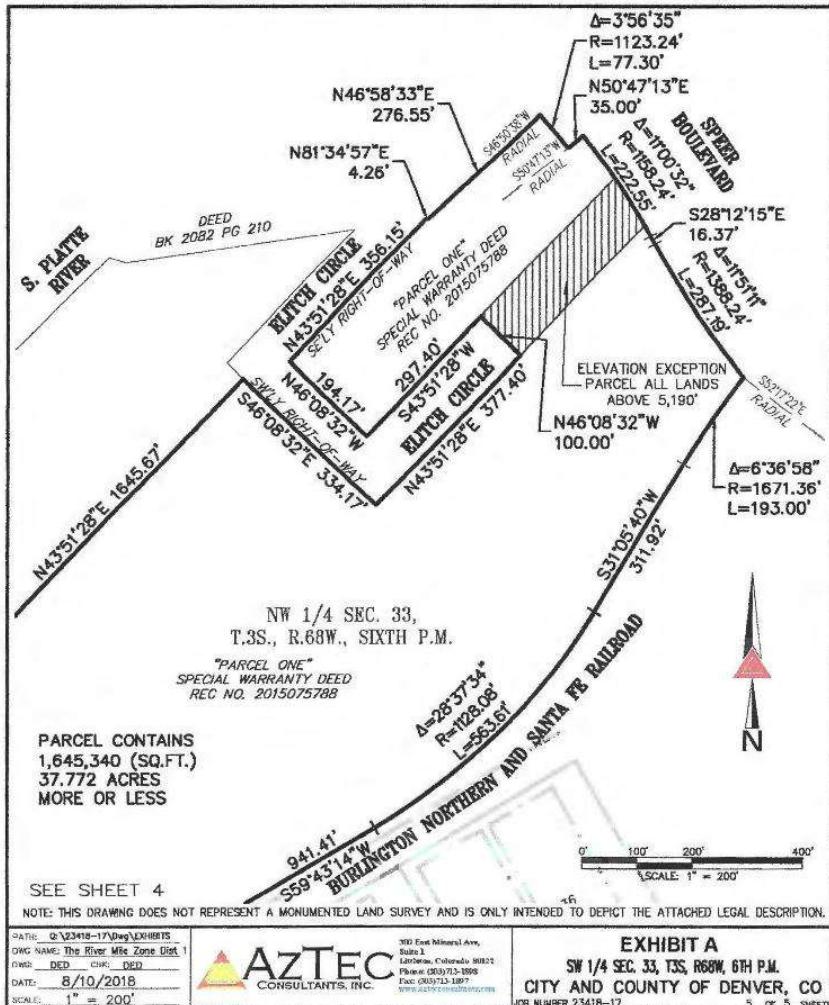


EXHIBIT B
AFFORDABLE HOUSING PLAN FOR THE RIVER MILE

THIS AFFORDABLE HOUSING PLAN FOR THE RIVER MILE (this "**Affordable Housing Plan**") serves as **EXHIBIT C** to that certain The River Mile Rezoning Development Agreement (the "**Development Agreement**") by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "**City**") and KSE Elitch Gardens / Developer/ Second City, LLLP, a Colorado limited liability company ("**Developer**"). Developer and the City are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Developer is the owner of the real property that is legally described on Exhibit A to the Development Agreement (the "**Property**"). The Property is located in downtown Denver and is bounded by Interstate 25 to the south, the South Platte River (the "**River**") to the west, Speer Boulevard to the north, and the Consolidated Main Line to the east.

B. As master developer, Developer seeks to develop the Property as a sustainable, mixed-use community that revitalizes the River, celebrates Denver's city life and provides attainable housing across various income levels (the "**Project**"). It is currently anticipated the Project will include up to 8,000 Residential Units (as such term is defined below) with affordable and market rate Residential Units integrated throughout the Property, connecting all residents to the ample on-site Project amenities and significant transportation/multi-modal options in a downtown location.

C. Consistent with the goals of Housing an Inclusive Denver and the Downtown Area Amendment Plan, Developer has voluntarily agreed that an equivalency of fifteen percent (15%) of the Residential Units in the Project will be Income Restricted Equivalent Units (as defined below).

D. To ensure a mix of Income Restricted Unit types, at least thirty percent (30%) of the Income Restricted Units will be two or more bedrooms and such units will be offered at a range of affordability levels, as further described herein.

E. To count towards the Income Restricted Equivalent Unit calculation, a long-term, 40 year affordability covenant will be recorded and encumber each: (i) Income Restricted Rental Unit (as such term is defined below) to restrict monthly rental payments and require that the tenants of such units meet income eligibility standards; and (ii) Income Restricted For-Sale Unit (as such term is defined below) to restrict the purchase price to require that the owners of such units must meet income eligibility standards.

G. In addition to constructing the Income Restricted Equivalent Units as part of the Project, Developer will pay The River Mile Affordable Housing Fee (as such term is defined below) for the first 6.5 million square feet of building permits issued for non-residential uses within the Project. From and after the point at which the Project has been issued building permits for 6.5 million square feet of non-residential uses, then Developer will be required to satisfy The River Mile Incentive Commercial Obligation (as such term is defined below) as a condition for issuance of any and all subsequent non-residential building permits, all as further described herein.

H. This Affordable Housing Plan is consistent with Citywide and local area plans by providing on-site, integrated, affordable housing across diverse income levels at a downtown location. The purpose of this Affordable Housing Plan is to set forth the Parties' agreement and understanding regarding the manner in which Developer will make available the Income Restricted Equivalent Units as part of the Project.

AGREEMENT

FOR GOOD AND VALUABLE MUTUAL CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **RECITALS AND EXHIBITS.** The recitals and exhibits of this Affordable Housing Plan are hereby incorporated herein to this Affordable Housing Plan.

2. **DEFINITIONS.** As used in this Affordable Housing Plan, the following phrases will have the following definitions:

a. "**AMI**" means the area median income for Denver, as published by the Colorado Housing and Finance Authority ("**CHFA**"), with adjustments for household size.

b. "**Bedroom Count Multiplier**" means one of the following multipliers, which will be applied to each Income Restricted Unit, depending on its number of bedrooms, for the calculation of the total Income Restricted Equivalent Units:

- (i) For studios and one (1) bedroom units, 1.0;
- (ii) For two (2) bedroom units, 1.5; and
- (iii) For three (3) bedroom units, 2.5.

Examples of these calculations are provided at **Schedule A**.

c. "**Control Period**" means a period of forty (40) years from the date of recording of a Covenant under this Affordable Housing Plan.

d. "**Covenant**" shall mean a Rental Covenant or a For-Sale Covenant, as such terms are defined in paragraphs 12 and 13 below.

e. "**Income Restricted Equivalent Units**" means an initial number of theoretical units to be used in the formula to determine the actual number of Income Restricted Units Developer is required to construct per this Affordable Housing Plan. The number of Income Restricted Units shall be multiplied by the applicable Bedroom Count Multiplier to arrive at the total required number of Income Restricted Equivalent Units. By way of illustration, a two-bedroom Income Restricted Unit will be multiplied by 1.5 (the two-bedroom unit multiplier) and thus will count as 1.5 Income Restricted Equivalent Units. A three-bedroom unit will be multiplied by 2.5 (the three-bedroom unit multiplier), and thus will count as 2.5 Income Restricted Equivalent Units.

f. "**Income Restricted For Sale Unit(s)**" means any Income Restricted Unit(s) that is for sale.

g. **"Income Restricted Rental Unit(s)"** means any Income Restricted Unit(s) that is for rent.

h. **"Income Restricted Unit"** means a Residential Unit that is made available and affordable to households (i) with respect to any Income Restricted Rental Unit, earning less than eighty percent (80%) of AMI and (ii) with respect to any Income Restricted For Sale Unit, earning less than one hundred percent (100%) of AMI, subject to Section 4. The Income Restricted Units will be restricted, as provided in the Covenant, as to (a) the amount of rent that may be charged by the owner of the Income Restricted Unit to any renter, (b) sales price charged by the seller of the Income Restricted Unit to any qualified buyer, as applicable, and (c) the income level of the renter or buyer to whom such units may be rented or sold, as applicable.

i. **"Linkage Fee"** means the affordable housing linkage fee that is assessed on non-exempted projects pursuant to applicable sections of Chapter 27 of the Denver Revised Municipal Code ("DRMC"), as it may be amended from time to time.

j. **"Non-Residential"** means the gross floor area does not contain any primary residential uses; provided, however, for purposes of calculating The River Mile Affordable Fee and The River Mile Incentive Commercial Obligation and for purposes of calculating the first 6.5 million square feet of Non-Residential uses only, the defined term "Non-Residential" expressly excludes any square footage within the Project (i) that is part of a community center constructed by or on behalf of a District, and (ii) any other construction that is subject to an exception under DRMC Section 27-154, as it may be amended from time to time.

k. **"Residential Unit(s)"** means any residential unit(s)/lot(s) constructed within the Project, for sale or for rent.

l. **"The River Mile Affordable Housing Fee"** is defined in Section 8.

m. **"The River Mile Incentive Commercial Obligation"** is defined in Section 9.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Development Agreement.

3. **AFFORDABILITY PERCENTAGE.** Fifteen percent (15%) of the total number of Residential Units in the Project shall be Income Restricted Equivalent Units in accordance with the terms and conditions of this Affordable Housing Plan ("Affordability Percentage"). If a percentage calculation results in a fraction, the fraction will be rounded down if it is below 0.5 and rounded up if it is 0.5 or greater. The requirements of this Section 3 do not impose any obligation or requirement to construct any Residential Units within the Project.

4. **LEVEL OF AFFORDABILITY.** The Project must provide the Income Restricted Units at the following levels of affordability ("Level of Affordability") in a manner consistent with Section 10 below:

a. At least 40% of the Income Restricted Units will be restricted to households earning 60% of AMI or lower (the "**60% AMI Units**"). A minimum of 25% of the 60% AMI Units will be restricted to households earning 30% of AMI or less (the "**30% AMI Units**").

b. The remainder (60% or less) of the Income Restricted Units will be restricted to households earning no greater than eighty percent (80%) of AMI (the “**Over 60% AMI Units**”), provided that up to 10 percent (10%) of the Over 60% AMI Units that are For-Sale Units may be restricted to households with incomes no greater than 100% AMI.

5. **BEDROOM MIX REQUIREMENT.** A minimum of thirty percent (30%) of the Income Restricted Units must be two or more bedrooms (“**Bedroom Mix Requirement**”) in a manner consistent with Section 10 below.

6. **FOR-SALE REQUIREMENT.** Developer will ensure at least ten percent (10%) of Income Restricted Units are For-Sale Units (“**For Sale Requirement**”) in a manner consistent with Section 10 below; provided, however, that the For Sale Requirement will not be applicable unless and until the Project has received a certificate of occupancy for one market rate Residential Unit that is for sale.

7. **INTEGRATION.** Developer will integrate the Income Restricted Units within the market rate Residential Units and provide Income Restricted Units with access to all common amenities or services available within the Project. However, the Income Restricted Units for 30% AMI and below may require sufficient public/private partnerships, tax credits and similar to construct and manage properly. Such partnerships and programs may not be available if such Income Restricted Units were located within a building with market rate units. Accordingly, it is permissible for the 30% AMI Income Restricted Units to be located within one building that may include other Income Restricted Units.

8. **THE RIVER MILE AFFORDABLE HOUSING FEE.** Prior to issuance of any building permit for a structure containing Non-Residential uses within the first 6.5 million square feet of Non-Residential development within the Project, including Non-Residential square footage in any mixed-use structure, such building permit will be subject to a Project affordable housing fee to be known as “**The River Mile Affordable Housing Fee**” in an amount equal to the then-current Linkage Fee applicable to such Non-Residential square footage. The intent of the River Mile Housing Fee is to permit future leveraging of additional public and private funding sources for the construction of Income Restricted Units within the Project. Prior to issuance of a building permit for a structure containing Non-Residential space, the River Mile Affordable Fee will be placed by the Developer into escrow pursuant to an escrow agreement that is consistent with this Section 8 and reasonably approved by the Executive Director of the City’s Office of Economic Development or any successor department or office (“**OED**”). For a period of twenty years from the execution of this Affordable Housing Plan, Developer may, subject to the consent of the Director of OED and provided that Developer is otherwise acting in accordance with the terms of this Affordable Housing Plan, access all or any portion of The River Mile Affordable Fees for the purpose of financing of any Income Restricted Units within the Project. The escrow agreement shall provide that if, on the twentieth anniversary of this Affordable Housing Plan, Developer has not utilized all of The River Mile Affordable Fees in escrow in accordance herewith, all funds remaining in the escrow account will promptly be paid directly to the City for deposit into its Affordable Housing Property Tax and Other Local Revenue Fund or otherwise for use by the City for affordable housing-related purposes. Non-Residential development in the Project in excess of 6.5 million square feet shall be subject to the River Mile Incentive

Commercial Obligation described in paragraph 9 below and shall not be subject to the River Mile Affordable Housing Fee.

9. **THE RIVER MILE INCENTIVE COMMERCIAL OBLIGATION.** From and after the point at which the Project has been issued building permits for 6.5 million square feet of Non-Residential space, including Non-Residential square footage in any mixed-use structure, and prior to and as a condition of the issuance of any and all subsequent Non-Residential building permits, Developer will have three options with regard to additional Non-Residential development (“**The River Mile Inventive Commercial Obligation**”):

- a. Pay the then-current amount of the Linkage Fee with a multiplier of four directly to the City for deposit into its Affordable Housing Property Tax and Other Local Revenue Fund or otherwise for use by the City for affordable housing-related purposes;
- b. Enter into an agreement with the City for construction of additional affordable units, above the Income Restricted Equivalent Units, based upon the then current alternative build unit formula as part of the Linkage Fee ordinance with a multiplier of four; or
- c. Enter into a Community Serving Use Agreement with the City subject to the requirements of and in the manner provided for in Article VI of the DRMC and any rules and regulations promulgated thereunder, as such may be amended from time to time, to provide “Community Serving Uses” within the Project. Developer will provide Community Serving Uses in the amount of the value of the-then current Linkage Fee with a multiplier of four.

10. **DEVELOPER’S COMPLIANCE.** Developer will complete or cause the completion of the Income Restricted Units on a phased basis in accordance with this Section 10.

- a. **AFFORDABLE PLAN PHASE.** Each consecutive four million square feet of development in the Project is referred to in this Affordable Housing Plan as an “**Affordable Plan Phase**.” Prior to the approval of the first site development plan (“**SDP**”) within any Affordable Plan Phase, Developer will be required to deliver to OED and the City’s Department of Community Planning and Development (“**CPD**”) for their review and approval, a plan stating how the applicable Affordable Plan Phase will comply with the Affordable Housing Plan’s requirements regarding Affordability Percentage, Level of Affordability, Bedroom Mix Requirement and For Sale Requirements (the “**Compliance Phase Plan**”), with reasonable specificity but allowing for flexibility to respond to market conditions throughout the Affordable Plan Phase. Approval of a Compliance Phase Plan shall not be withheld so long as Developer reasonably demonstrates that the Project will be in compliance with this Affordable Housing Plan by the completion of such Affordable Housing Phase. Notwithstanding the foregoing, it is acknowledged and agreed that the Project is not anticipated, and will not be required in the first Compliance Phase Plan, to be in full compliance with the requirements of this Affordable Housing Plan with

respect to the Affordability Percentage, Level of Affordability, Bedroom Mix Requirement, and For Sale Requirement at the completion of the first Affordable Plan Phase.

- b. **ANNUAL MEETINGS; PLAN MODIFICATIONS.** The Compliance Phase Plan is intended to be a flexible document that will be more general at the commencement of an Affordable Housing Phase and will be further refined throughout such phase to reflect the Project's buildout status and then-current market conditions. Developer and the City will meet no fewer than one time per year to discuss the Compliance Phase Plan and any modifications needed thereto. All modifications to Compliance Phase Plans will be permissible so long as Developer continues to demonstrate the Project will be in compliance with this Affordable Housing Plan by the completion of the applicable Affordable Plan Phase, with the exception of the first Affordable Plan Phase as provided above.
- c. **SDP MONITORING.** To allow for periodic assessment of compliance throughout an Affordable Plan Phase, each SDP shall set forth square footage of development, broken down by use (residential or Non-Residential) and information regarding any Income Restricted Units included within such SDP, as well as a cumulative total for the Project's approved SDPs and Income Restricted Units with a Covenant in place, all in the manner set forth on **Schedule B** attached to this Affordable Housing Plan. The City may deny approval of any SDP that is inconsistent with the Developer's approved Compliance Phase Plan unless and until the SDP is revised to be consistent with the Compliance Phase Plan or a modification to the Compliance Phase Plan is submitted and approved and the SDP is consistent therewith.
- d. **CERTIFICATE OF COMPLIANCE.** Upon completion of each Affordable Plan Phase of the Project, Developer shall provide to OED and CPD a certificate of compliance with the Affordable Housing Plan Affordability Percentage, Level of Affordability, Bedroom Mix Requirement and For Sale Requirement indicating how such requirements were met (each a "**Compliance Certificate**"). Income Restricted Units shall be counted as produced at the time of recordation of a Covenant; provided, however, Developer will not be considered out of compliance with any Affordable Housing Phase if a sufficient number of proposed Income Restricted Units are under vertical construction at the time of such compliance review.
- e. **WITHHOLDING BUILDING PERMITS.** The City may deny issuance of further building permits or certificates of occupancy within the Project if the Project reaches the end of any Affordable Housing Phase, except the first Affordable Housing Phase, and is not in compliance with the requirements of this Affordable Housing Plan.
- f. **CALCULATION OF COMPLIANCE.** It is expressly understood that the Affordable Housing Plan's Level of Affordability, Bedroom Mix Requirement and For Sale

Requirements are calculated based upon the number of Income Restricted Units constructed, as opposed to the number of Income Restricted Equivalent Units.

11. AFFORDABLE HOUSING REQUIREMENTS & CPV INCENTIVE HEIGHT REQUIREMENTS NOT APPLICABLE.

The Parties agree that this Affordable Housing Plan satisfies the requirements of 27-154(a) of the Denver Revised Municipal Code and the incentive height requirements for the Downtown Central Platte Valley-Auraria River (D-CPV-R) and Center (D-CPV-C) Districts, as any of the foregoing may be amended. Nothing in this Section 11 shall be construed to contradict Section 8 and Section 9 above.

12. COVENANT FOR RENTAL UNITS. For any building on the Property that will contain an Income Restricted Rental Unit, the owner of such building shall, as a condition to receipt of the first certificate of occupancy for a Residential Unit in the building, record in the real estate records of the City and County of Denver a covenant, at Developer's election, that either (i) encumbers the land underlying such building in the form attached hereto as **Schedule C-1**; or (ii) encumbers the Income Restricted Units included within such building in the form attached hereto as **Schedule C-2** (each, a "**Rental Covenant**"), which shall constitute a covenant running with the title to the land or the Income Restricted Units, as applicable. Each Rental Covenant shall provide that all Income Restricted Rental Units shall be occupied by tenants whose household incomes are at or below the AMI limitation for such unit and that the rent for such unit shall not exceed the applicable income limitation for such unit. Each Rental Covenant shall contain such other terms and restrictions as are set forth in **Schedule C-1 or Schedule C-2** and as otherwise agreed upon by the owner, the Executive Director of OED and the City Attorney's Office and shall encumber such Income Restricted Units for a period of not less than forty (40) years from the date of recordation of the Covenant.

13. COVENANT FOR FOR-SALE UNITS. For any Income Restricted For-Sale Unit in the Project, the Developer or the owner of such unit shall, prior to and as a condition for the issuance of a certificate of occupancy, record in the real estate records of the City and County of Denver a covenant on such property in the form attached hereto as **Schedule C-3** or such other security instrument as is reasonably deemed advisable by the City (the "**For-Sale Covenant**"), which shall constitute a covenant running with the land. Each For-Sale Covenant shall provide that during the period during which such For-Sale Covenant is in effect, the Income Restricted For-Sale Unit shall be sold only to buyers with household incomes not exceeding the AMI limitation for such unit and the upon initial sale and each subsequent sale during the restricted period, the sale price for such unit shall not exceed the maximum sale price established by OED for such AMI level. Each For-Sale Covenant shall contain such other terms and restrictions as are set forth in **Schedule C-3** and as otherwise agreed upon by the owner, the Executive Director of OED and the City Attorney's Office, and shall encumber the applicable unit for a period of not less than forty (40) years from the date of recordation thereof.

14. AMENDMENT AND ENFORCEMENT OF COVENANT. The owner and manager of any Income Restricted Unit shall be responsible for compliance with any applicable Covenant and for periodic reporting to OED on such compliance. OED will be responsible for monitoring such compliance. The Director will not unreasonably withhold consent of Developer's request for an amendment to the covenant template provided that the request continues to comply with and satisfy this Affordable Housing Plan. Owners of lots within the Property other than Developer will be obligated to comply with this

Affordable Housing Plan and failure to do so will be deemed a breach of agreement enforceable by specific performance or damages to compensate the City for the loss of the affordable housing.

15. **TERMINATION.** This Affordable Housing Plan will be in effect until forty (40) years after the date on which the final certificate of occupancy for the last building to be constructed on the Property (the "**Termination Date**") is issued, and this Affordable Housing Plan will automatically terminate on the Termination Date. Upon demonstration by an owner at the Property that the City has issued a final certificate of occupancy for the last building to be constructed on the Property, OED agrees to execute a document or instrument in recordable form reasonably requested by Developer or an owner of any part of the Property confirming that the Termination Date has occurred.

16. MISCELLANEOUS.

a. Unit Types. The exterior design of the Income Restricted Equivalent Units will indistinguishable from the other units in the project in terms of quality of finishes and general appearance and the interior design of the Income Restricted Equivalent Units will be functionally equivalent of other units within the Project.

b. Access to OED and City Subsidies; Tax Increment Financing. The Project will be eligible for all available subsidies, credits and similar economic incentives available to developers of affordable housing within the City for units at or below 60% AMI, provided that recipients of such subsidies will be subject to all City restrictions associated with such subsidies. The parties agree that if tax increment financing (TIF) is pursued for any improvements in the Project, additional affordable housing requirements may be imposed in connection with such TIF.

c. Entire Agreement This Affordable Housing Plan, together with any exhibits or documents referred to in, or supplied pursuant to the terms of this Affordable Housing Plan, contains the entire agreement relative to affordable housing on the Property and supersedes all prior oral representations, covenants, understandings or other agreements between the parties or their agents.

d. Covenants Running with the Land. All provisions of this Affordable Housing Plan will be deemed to be covenants running with the land or equitable servitudes, as the case may be. The benefits, burdens and other provisions contained in this Affordable Housing Plan will be binding upon and will inure to the benefit of Developer and the City and their respective successors and assigns. The City acknowledges that Developer may convey certain parcels of property within the Property to others for development and that in the event of such conveyance, the new owners of the conveyed parcel will become responsible for obligations under this Affordable Housing Plan with respect to such parcels of property conveyed.

e. Third Party Beneficiaries. Enforcement of the terms and conditions of this Affordable Housing Plan, and all rights of action relating to such enforcement will be strictly reserved to the City and Developer, or Developer's successor as described herein and nothing contained in this Affordable Housing Plan will give or allow any such claim or right of action by any other or third person regarding the terms and conditions hereof. It is the express intention of the City and Developer that any person other than the City or Developer receiving services or benefits under this Affordable Housing Plan will be deemed to be an incidental beneficiary only.

f. Section Headings. The section headings are inserted only for convenient reference and do not define, limit or prescribe the scope of this Affordable Housing Plan.

g. Governing Law. This Affordable Housing Plan will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated herein. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Affordable Housing Plan will be in the District Court of the State of Colorado, Second Judicial District.

h. No Discrimination In Employment. In connection with the performance of work under this Affordable Housing Plan, Developer may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. Developer will insert the foregoing provision in all subcontracts.

i. Severability. If any terms, covenants or provisions of this Affordable Housing Plan will be illegal or unenforceable for any reason, the same will not invalidate any other term, covenants or provisions, and all of the remaining terms, covenants and provisions will remain in full force and effect.

j. Assignment. It is contemplated that the City may sometime in the future assign its enforcement rights under this Affordable Housing Plan to an existing or to-be-formed entity which has as its primary purpose the development or management of rent-restricted housing projects in the Denver metropolitan area or is otherwise qualified to undertake the responsibilities described herein. Written notice of any such assignment will be provided to Developer or the owner of the applicable Income Restricted Units at the last known address at least thirty (30) days prior to the effective date of the assignment. Any such assignment will be in writing and recorded in the real property records of the City and County of Denver, Colorado and, upon such recording, the assignee so named in such instrument will in all instances replace references to the City in this Affordable Housing Plan and in the associated Covenant.

k. Amendment. This Affordable Housing Plan may be amended, modified or rescinded only upon a writing executed by the City and Developer and recorded in the real property records of the City and County of Denver, Colorado.

l. Examination of Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Developer, involving transactions related to this Affordable Housing Plan until expiration of the applicable statute of limitations.

m. Electronic Signatures and Electronic Records. Developer consents to the use of electronic signatures by the City. This Affordable Housing Plan, 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 this Affordable Housing Plan 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 this agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

SCHEDULE A
BEDROOM CALCULATIONS

Example - 100 Income Restricted Units Constructed in Building A

Income Restricted Units	# of Bedrooms	Multiplier	Income Restricted Equivalent Unit
10	3	2.5	25
20	2	1.5	30
70	1	1	70
<hr/>			<hr/>
100			125

SCHEDULE B
SDP COMPLIANCE CHARTS

THE RIVER MILE AFFORDABLE HOUSING SDP COMPLIANCE CHECKLIST	
{Insert Phase or Block Name for this SDP}	
Information below is based upon this SDP Only	
The River Mile Affordable Housing Plan sets forth the specific requirements for The River Mile, this checklist is for compliance monitoring purposes only and is not intended to modify or amend the terms of the Affordable Housing Plan. All defined terms used herein are as established in the Affordable Housing Plan	
Affordability Percentage (before calculation of Income Restricted Equivalent Units)	
Number of Income Restricted Units	
Number of Total Residential Units	
Income Restricted Units Bedroom Mix	
Number of studio/one bedrooms	
Number of two bedrooms	
Number of three bedrooms	
Percentage of Income Restricted Units two or more bedrooms	
Level of Affordability	
Number of Income Restricted Units 60% AMI and Under	
Percentage of Income Restricted Units 60% AMI and Under	
Number of Income Restricted Units under 30% AMI	
Percentage of Income Restricted Units under 30% AMI	
Number of Income Restricted Units between over 60% AMI and 80% AMI	
Percentage of Income Restricted Units between over 60% AMI and 80% AMI	
Number of Income Restricted Units (For-Sale only) up to 100% AMI	
For Sale Requirement	
Number of for-sale Income Restricted Units	
Percentage of for-sale Income Restricted Units	
Calculation of Income Restricted Equivalent Units	
Number of studio/one bedrooms in this SDP _____ X multiplier of 1	
Number of two bedrooms in this SDP _____ X multiplier of 1.5	
Number of three bedrooms in this SDP _____ X multiplier of 2.5	
Total Number of Income Restricted Equivalent Units	
(The sum total of the above three calculations after application of the bedroom multiplier)	
Affordability Percentage of all Residential Units in this SDP	
(Total number of Residential Units in this SDP divided by the total number of Income Restricted Equivalent Units)	
The River Mile Affordable Fee Calculation (applicable until 6.5 square feet of Non Residential Uses)	
Total square footage of Non-Residential Uses (excludes community center) for this SDP	
Amount due at building permit issuance based on the then current Linkage Fee amount	
The River Mile Commercial Obligation (applicable after 6.5 square feet of Non Residential Uses)	
See Affordable Housing Plan for options when this amount of Non Residential Uses have been issued building permits	

THE RIVER MILE AFFORDABLE HOUSING SDP COMPLIANCE CHECKLIST	
Information below is based upon all approved Income Restricted Units within all SDPs for The River Mile, including this SDP, to date	
The River Mile Affordable Housing Plan sets forth the specific requirements for The River Mile, this checklist is for compliance monitoring purposes only and is not intended to modify or amend the terms of the Affordable Housing Plan. All defined terms used herein are as established in the Affordable Housing Plan	
Affordability Percentage (before calculation of Income Restricted Equivalent Units)	
Number of Income Restricted Units	
Number of Total Residential Units	
Income Restricted Units Bedroom Mix	
Number of studio/one bedrooms	
Number of two bedrooms	
Number of three bedrooms	
Percentage of Income Restricted Units two or more bedrooms	
Level of Affordability	
Number of Income Restricted Units 60% AMI and Under	
Percentage of Income Restricted Units 60% AMI and Under	
Number of Income Restricted Units under 30% AMI	
Percentage of Income Restricted Units under 30% AMI	
Number of Income Restricted Units between over 60% AMI and 80% AMI	
Percentage of Income Restricted Units between over 60% AMI and 80% AMI	
Number of Income Restricted Units (For-Sale only) up to 100% AMI	
For Sale Requirement	
Number of for-sale Income Restricted Units	
Percentage of for-sale Income Restricted Units	
Calculation of Income Restricted Equivalent Units	
Number of studio/one bedrooms within all approved SDPs	X multiplier of 1
Number of two bedrooms within all approved SDPs	X multiplier of 1.5
Number of three bedrooms within all approved SDPs	X multiplier of 2.5
Total Number of Income Restricted Equivalent Units within all approved SDPs	
(The sum total of the above three calculations after application of the bedroom multiplier)	
Affordability Percentage of Income Restricted Equivalent Units within all approved SDPs	
(Total number of Residential Units within all approved SDPs	
divided by the total number of Income Restricted Equivalent Units within all approved SDPs)	
The River Mile Affordable Fee Calculation (applicable until 6.5 square feet of Non Residential Uses)	
within all approved SDPs	
Total square footage of Non-Residential Uses (excludes community center)	
The River Mile Commercial Obligation (applicable after 6.5 square feet of Non Residential Uses)	
{See Affordable Housing Plan for options when this amount of Non Residential Uses have been issued building permits}	
Affordable Plan Phase	
Total amount of square footage for all uses within all approved SDPs for The River Mile	

THE RIVER MILE AFFORDABLE HOUSING SDP COMPLIANCE CHECKLIST	
Information below is based upon all The River Mile Income Restricted Units with	
a Covenant in place and building permit issued	
The River Mile Affordable Housing Plan sets forth the specific requirements for The River Mile, this checklist is for compliance monitoring	
purposes only and is not intended to modify or amend the terms of the Affordable Housing Plan. All defined terms used herein are as	
established in the Affordable Housing Plan	
Affordability Percentage (before calculation of Income Restricted Equivalent Units)	
Number of Income Restricted Units	
Number of Total Residential Units	
Income Restricted Units Bedroom Mix	
Number of studio/one bedrooms	
Number of two bedrooms	
Number of three bedrooms	
Percentage of Income Restricted Units two or more bedrooms	
Level of Affordability	
Number of Income Restricted Units 60% AMI and Under	
Percentage of Income Restricted Units 60% AMI and Under	
Number of Income Restricted Units under 30% AMI	
Percentage of Income Restricted Units under 30% AMI	
Number of Income Restricted Units between over 60% AMI and 80% AMI	
Percentage of Income Restricted Units between over 60% AMI and 80% AMI	
Number of Income Restricted Units (For-Sale only) up to 100% AMI	
For Sale Requirement	
Number of for-sale Income Restricted Units	
Percentage of for-sale Income Restricted Units	
Calculation of Income Restricted Equivalent Units	
Number of studio/one bedrooms with Covenant _____ X multiplier of 1	
Number of two bedrooms with Covenant _____ X multiplier of 1.5	
Number of three bedrooms with Covenant _____ X multiplier of 2.5	
Total Number of Income Restricted Equivalent Units	
(The sum total of the above three calculations after application of the bedroom multiplier)	
Affordability Percentage of Income Restricted Equivalent Units with a Covenant based upon all Residential Units	
(Total number of Residential Units with building permits issued)	
divided by the total number of Income Restricted Equivalent Units with a Covenant)	
The River Mile Affordable Fee Calculation (applicable until 6.5 square feet of Non Residential Uses)	
Building Permit Issued	
Total square footage of Non-Residential Uses (excludes community center)	
The River Mile Affordable Fee paid at building permit issuance to date	
The River Mile Commercial Obligation (applicable after 6.5 square feet of Non Residential Uses)	
(See Affordable Housing Plan for options when this amount of Non Residential Uses have been issued building permits)	
Affordable Plan Phase	
Total amount of square footage for all uses within all approved SDPs for The River Mile	

SCHEDULE C
COVENANTS

Schedule C-1

WHEN RECORDED MAIL TO:

Office of Economic Development
Attention: _____
201 W. Colfax Ave., Dept. 208
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

RENTAL AND OCCUPANCY COVENANT

THIS RENTAL AND OCCUPANCY COVENANT is made this _____ day of _____, 20____, by _____, a _____ ("Owner").

RECITALS:

WHEREAS, Owner is the owner of the following described real property in the City and County of Denver, State of Colorado (the "Subject Property"):

[INSERT LEGAL DESCRIPTION]

WHEREAS, the Subject Property is located within the development known as River Mile (the "Project");

WHEREAS, the master developer of River Mile has entered into an Affordable Housing Plan with the City and County of Denver, Colorado (the "City"), pursuant to which certain affordable housing requirements were placed on all property within the Project (the "Affordable Housing Plan");

WHEREAS, Owner has agreed the _____ of units within the Subject Property will serve as Income Restricted Units (as such term is defined in the Affordable Housing Plan) (the "Affordable Units") and Owner has agreed to record a covenant to run with title to the Subject Property to ensure that certain rental and occupancy limitations, and administrative requirements for the Affordable Units are met; and

WHEREAS, the intent of Owner is to preserve through this Covenant the affordability of the Affordable Units described herein for persons of low to moderate income, and to assign to the City the right to enforce compliance with this Covenant.

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

1. **Rent Limitations.** The rent limitations for the Affordable Units are:
 - i. _____ (____) of the Affordable Units (the “____% Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals _____ percent (____%) of the median income for the Denver area, as published by the Colorado Housing and Finance Authority (“CHFA”), with adjustments for the number of bedrooms in the unit, or (ii) fair market rent for comparable units in the area as published by CHFA (“Fair Market Rent”).
 - ii. _____ (____) the Affordable Units (the “____% Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed sixty percent (60%) of the adjusted income of a family whose annual income equals _____ percent (____%) of the median income for the Denver area, as published by CHFA, with adjustments for the number of bedrooms in the unit, or (ii) Fair Market Rent.
 - iii. _____ (____) of the Affordable Units (the “____% Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed eighty percent (80%) of the adjusted income of a family whose annual income equals _____ percent (____%) of the median income for the Denver area, as published by CHFA, with adjustments for the number of bedrooms in the unit, or (ii) Fair Market Rent
 - iv. The ____% Units, ____% Units and ____% Units are collectively referred to herein as the “IRUs.” The City shall determine maximum monthly allowances for utilities and services annually using the CHFA model. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

2. **Occupancy/Income Limitations.** The occupancy and income limitations for the Affordable Units are:

- i. _____ of the Affordable Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as published by CHFA.
- ii. _____ of the Affordable Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA.

iii. _____ of the Affordable Units shall be occupied by tenants whose incomes are at or below eighty percent (80%) of the median income for the Denver area as published by CHFA.

3. **Applicability of City Rules and Regulations.** All provisions regarding marketing, tenant selection, verification, eligibility, reporting, and Preservation Ordinance applicability set forth in the Rules and Regulations promulgated under the Affordable Housing Permanent Funds Ordinance adopted pursuant to Article V, Chapter 27 of the DRMC shall be applicable to Owner and the IRUs as if the IRUs were “Build Alternative Rental Units” as such term is defined therein.

4. **Term.** This Covenant shall encumber the Subject Property for a period of forty (40) years from the date of recording hereof and shall not be amended or modified without the express written consent of the City and County of Denver.

5. **Survivability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

6. **Enforcement.** This Covenant may be enforced by the City and County of Denver, or appropriate representatives thereof.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the day and year first above written.



By: _____

Title: _____

“OWNER”

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

The foregoing instrument was acknowledged before me this _____ day of
_____, 201____ by _____ as
of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

[REDACTED]
By: _____

Title: _____

“OWNER”

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

The foregoing instrument was acknowledged before me this _____ day of
_____, 201____ by _____ as
of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

Schedule C-2

WHEN RECORDED MAIL TO:

Office of Economic Development
Attention: _____
201 W. Colfax Ave., Dept. 208
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

RENTAL AND OCCUPANCY COVENANT

THIS RENTAL AND OCCUPANCY COVENANT (the “Covenant”) is made this ____ day of _____, 20____, by _____, a _____ (“Owner”).

RECITALS:

WHEREAS, Owner is the owner of the following described real property in the City and County of Denver, State of Colorado (the "Affordable Units"):

Condominium Unit Nos. [INSERT INCOME RESTRICTED UNIT NUMBERS] in
_____, according to the Condominium Declaration
for _____ recorded under Reception No. _____

and the Condominium Map of _____

WHEREAS, the Affordable Units are located within the development known as River Mile (the "Project") and a part of a building with a street address of _____, Denver, Colorado;

WHEREAS, the master developer of River Mile has entered into an Affordable Housing Plan with the City and County of Denver, Colorado (the “City”), pursuant to which certain affordable housing requirements were placed on all property within the Project (the “Affordable Housing Plan”);

WHEREAS, Owner has agreed the Affordable Units will serve as Income Restricted Units (as such term is defined in the Affordable Housing Plan) and Owner has agreed to record a covenant to run with title to the Affordable Units to ensure that certain rental and occupancy limitations, and administrative requirements for the Affordable Units are met; and

WHEREAS, the intent of Owner is to preserve through this Covenant the affordability of the Affordable Units described herein for persons of low to moderate income, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, the following are established as covenants running with the Affordable Units:

1. **Rent Limitations.** The rent limitations for the Affordable Units are:
 - i. _____ () of the Affordable Units (the “ % Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals _____ percent (%) of the median income for the Denver area, as published by the Colorado Housing and Finance Authority (“CHFA”), with adjustments for the number of bedrooms in the unit, or (ii) fair market rent for comparable units in the area as published by CHFA (“Fair Market Rent”).
 - ii. _____ () the Affordable Units (the “ % Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed sixty percent (60%) of the adjusted income of a family whose annual income equals _____ percent (%) of the median income for the Denver area, as published by CHFA, with adjustments for the number of bedrooms in the unit, or (ii) Fair Market Rent.
 - iii. _____ () of the Affordable Units (the “ % Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed eighty percent (80%) of the adjusted income of a family whose annual income equals _____ percent (%) of the median income for the Denver area, as published by CHFA, with adjustments for the number of bedrooms in the unit, or (ii) Fair Market Rent
 - iv. The % Units, % Units and % Units are collectively referred to herein as the “IRUs.” The City shall determine maximum monthly allowances for utilities and services annually using the CHFA model. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

2. **Occupancy/Income Limitations.** The occupancy and income limitations for the Affordable Units are:

- i. _____ of the Affordable Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as published by CHFA.

- ii. _____ of the Affordable Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA.
- iii. _____ of the Affordable Units shall be occupied by tenants whose incomes are at or below eighty percent (80%) of the median income for the Denver area as published by CHFA.

3. **Applicability of City Rules and Regulations.** All provisions regarding marketing, tenant selection, verification, eligibility, reporting, and Preservation Ordinance applicability set forth in the Rules and Regulations promulgated under the Affordable Housing Permanent Funds Ordinance adopted pursuant to Article V, Chapter 27 of the DRMC shall be applicable to Owner and the IRUs as if the IRUs were “Build Alternative Rental Units” as such term is defined therein.

4. **Term.** This Covenant shall encumber the Subject Property for a period of forty (40) years from the date of recording hereof and shall not be amended or modified without the express written consent of the City and County of Denver.

5. **Survivability.** If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

6. **Enforcement.** This Covenant may be enforced by the City and County of Denver, or appropriate representatives thereof.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Owner has caused this Covenant to be duly executed as of the day and year first above written.



By: _____

Title: _____

“OWNER”

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

The foregoing instrument was acknowledged before me this _____ day of _____, 201____ by _____ of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

[REDACTED]
By: _____

Title: _____

“OWNER”

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

The foregoing instrument was acknowledged before me this _____ day of
_____, 201____ by _____ as
of _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

Schedule C-3

NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT FOR THE OCCUPANCY AND RESALE OF FOR SALE UNITS

[project name]

THIS NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANT FOR THE OCCUPANCY AND RESALE OF UNITS at

_____, (the "Covenant") is
[project name]
made and entered into this _____ day of _____, 20____, by
[developer entity] (the

"Declarant"), and enforceable by the CITY AND COUNTY OF DENVER, COLORADO, or its designee (the "City").

WITNESSETH:

WHEREAS, Declarant owns the real property legally described as follows:

[INSERT LEGAL LOT DESCRIPTIONS]

OR

[Condominium Unit Nos. [INSERT INCOME RESTRICTED UNIT NUMBERS] in
_____, according to the Condominium Declaration
for _____ recorded under Reception No. _____]

and the Condominium Map of _____]

OR

[Townhome units located at [INSERT STREET ADDRESS] and identified by Assessor's
Parcel Numbers _____]

(each such unit being referred to herein as a "IRU", and two or more of such units being referred to herein as "IRUs").

WHEREAS, Declarant has entered into that certain Agreement to Build Affordable Units dated _____ and recorded under Reception No. _____ in the real estate records of the City and County of Denver, Colorado (the "ABAU").

WHEREAS, Declarant desires to satisfy the conditions of the ABAU by selling the IRUs

at affordable prices to households meeting certain income requirements, restricting the use and occupancy of the IRUs, restricting the price for future sales, and imposing income requirements for future purchasers of the IRUs, all as set forth herein;

WHEREAS, Declarant acknowledges and agrees that the covenants set forth herein shall run with the land and shall bind each IRU and all future owners of (and other parties with an interest in title to) such IRU until the Final Sale thereof;

WHEREAS, upon the Final Sale of each IRU, such IRU shall be released from the provisions of this Covenant;

NOW, THEREFORE, for consideration hereby acknowledged by Declarant, Declarant hereby represents, covenants and declares as follows:

1. Definitions. The following terms shall have the following meanings when used in this Covenant:

(a) “AHDF Rules” means the Affordable Housing Permanent Funds Ordinance Administrative Rules and Regulations adopted by the City, as they pertain to build alternative for-sale units. Such AHDF Rules shall be applicable to the IRUs, Owner, and Declarant and its successors in interest as if the IRUs were “Build Alternative For-Sale Units,” as such term is defined therein.

(b) “AMI” or “adjusted median income” or “median income” or “area median income” means the median income for the Denver metropolitan area, adjusted for household size as calculated by HUD.

(c) “Covenant Period” means, for each IRU, a period of forty (40) years, commencing on the date of closing of the Initial Sale (as defined below) of such IRU.

(d) “Director” means the Executive Director of OED or his or her designee.

(e) “Eligible Household” means a household that holds a valid verification of eligibility from OED (as described in Section 4 below) that entitles the household to buy an IRU. To be eligible to purchase an IRU at Initial Sale or resale, households must be earning no more than _____ percent (____%) of the AMI at the time of execution of a contract for purchase of an IRU and meet all other requirements set forth in the AHDF Rules.

(f) “Final Sale” means, with respect to each IRU, the first resale of such IRU occurring after the end of the Covenant Period in compliance with the terms and restrictions set forth herein. If the IRU is not resold within the period beginning on the expiration date of the Covenant Period and ending on the ten (10) year anniversary of such date, the Final Sale of such IRU shall be deemed to have occurred on such ten (10) year anniversary.

(g) “HUD” means the U.S. Department of Housing and Urban Development.

(h) “Initial Sale” means the first sale of an IRU by Declarant;

(i) “Maximum Gross Income” means the pre-tax income from all acceptable income sources as defined in the HUD Technical Guide for Determining Income;

(j) “Maximum Sale Price” means the maximum amount for which an IRU may

be sold by Declarant, as set forth in Section 3(a) below or sold by a subsequent Owner, as set forth in Section 7 below.

(k) "Memorandum of Acceptance" shall have the meaning set forth in paragraph 5 below.

(l) "OED" means the City and County of Denver Office of Economic Development or any successor agency which is assigned responsibility for the City's Affordable Housing Permanent Funds Program.

(m) "Owner" means any Eligible Household that purchases an IRU from the Declarant and any subsequent buyer, devisee, transferee, grantee or owner of, or holder of title to, any IRU, provided that if the City shall for any reason take title to the IRU, it shall not be considered an "Owner" for purposes of this Covenant.

(n) "Purchase Money First Lien Holder" means the lender who advances funds to an Eligible Household for the purchase an IRU and who is a holder of a purchase money first priority deed of trust against the IRU. The Purchase Money First Lien Holder shall be deemed to include assigns of the first lien holder but shall not include lenders who re-finance an IRU.

(o) "Transfer" means any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in an IRU, including, but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of an IRU is transferred and the Owner obtains title.

2. Property Subject to Covenant. Declarant and each subsequent Owner of any IRU, and every party with an interest in title to any IRU hereby covenants and agrees that their IRU will be used, occupied and Transferred strictly in conformance with the provisions of this Covenant, the ABAU for so long as this Covenant remains in force and effect with respect to such IRU.

3. Initial Sale. The Initial Sale of each IRU by Declarant shall be subject to the following restrictions:

(a) The Initial Sale of each IRU shall be at a price no greater than [the OED-published price for that size unit as of the date of the executed purchase and sale contract for that unit / _____ and No/100 Dollars (\$____)].

(b) No less than thirty (30) days prior to the proposed offering of any IRU, Declarant shall provide written notice to OED containing the information required by the AHDF Rules. Within ten (10) days after receipt of such notice, OED shall notify Declarant whether the notice is adequate or materially deficient. If the notice is deemed to be deficient, the offering cannot proceed until the deficiency has been cured and approved by OED. If the notice is deemed adequate or if OED does not make a determination within such ten (10) day period, Declarant may proceed with the offering.

(c) Declarant shall make a good faith effort, as described in the AHDF Rules, to market each IRU for sale to households that are expected to qualify as Eligible Households and use the IRU as their own primary residence.

(d) If, during Declarant's marketing of the IRUs, more than one offer is received for a particular IRU, the Declarant shall use a fair selection process to select among the

prospective purchasers.

(e) The Declarant shall not close on any sale of any IRU without first obtaining a verification of eligibility issued by OED for the buyer as set forth in Section 4 below. A copy of each verification shall be furnished by OED and maintained on file by OED.

(f) Upon closing of the Initial Sale of each IRU, the purchase contract, Memorandum of Acceptance, appraisal (if necessary), the warranty deed and a copy of the HUD-1 Settlement Sheet (or similar documentation), and any other documentation deemed necessary by OED shall be filed with OED to verify the sale of the IRU.

4. Eligible Household Verification.

(a) Within five (5) days after the date of full execution of a purchase and sale contract for any IRU, the seller shall ensure that the purchaser completes and submits to OED a request for income verification (on the form provided by the City), which shall constitute a request for determination that the purchaser meets all requirements to be deemed an Eligible Household and that the purchase price does not exceed the Maximum Sale Price.

(b) Within ten (10) business days after receipt of the income verification request, the City shall verify the potential purchaser's household income based on the potential purchaser's Maximum Gross Income and the AHDF Rules and either (i) issue a verification, signed by the City, stating that the purchaser is an Eligible Household and that the purchase price does not exceed the Maximum Sale Price (the "Verification"); or (ii) deliver notice to the selling Owner and purchaser specifying the reasons that a Verification cannot be issued. Failure by the City to make its determination and deliver a Verification or non-issuance notice within the ten (10) business day period described above shall be deemed an approval of the purchaser and the purchase price, and the City shall thereafter issue a Verification with respect to the transaction immediately upon request by the selling Owner or the purchaser.

5. Memorandum of Acceptance. Each Owner shall execute and record a Memorandum of Acceptance in substantially the form attached hereto as Exhibit B (completed with the appropriate information relating to the IRU and such Owner) in the real property records of the City and County of Denver, Colorado concurrently with the recordation of such Owner's deed to his or her IRU. Such Memorandum of Acceptance shall state that the conveyed property is an IRU and is subject to the restrictions contained in this Covenant.

Upon any sale or resale of the IRU, a Memorandum of Acceptance shall be recorded with the Clerk and Recorder of the City and County of Denver concurrently with the deed for the IRU. If the Memorandum of Acceptance is not so recorded, then the transfer shall be voidable at the option of the City.

6. Use and Occupancy.

(a) Purchasers of an IRU shall occupy the IRU within thirty (30) days after closing of their purchase thereof.

(b) At all times during the Covenant Period the IRU Owner shall occupy the IRU as the Owner's sole, exclusive and permanent place of residence. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever one is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the City may consider

the following circumstances relating to the Owner: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration. Temporary exceptions allowing the Owner of an IRU to rent out the IRU (subject to the limitations set forth in the AHDF Rules) may only be granted by OED as permitted by and justified under the AHDF Rules. Under no circumstances shall an IRU be used as a short-term rental, as defined by Article III, Chapter 33 of the Denver Revised Municipal Code.

(c) If an IRU Owner dies, at least one person taking title by will or by operation of law, whether eligible or not, either shall occupy the IRU as his, her, or their primary residence during the Covenant Period, or shall sell the IRU as provided herein. In no event shall the death of an IRU Owner affect the operation of the Covenant or the AHDF Rules

7. IRU Resale.

(a) If, at any time during the Covenant Period, an Owner desires to sell their IRU, the Owner shall, at least ten (10) days prior to offering such IRU for sale, complete and submit to OED a Maximum Resale Request (on the form provided by the City). Such form shall include the date on which the Owner will be ready to begin the marketing to Eligible Households.

(b) OED's determination of Maximum Sale Price for the IRU shall be based on the affordable sale price for a unit of similar size, as published by OED annually in accordance with the AHDF Rules.

(c) The Owner may not list the IRU for sale prior to receipt of OED's written determination of the Maximum Sale Price. After receiving such determination from the City, the selling Owner may list the IRU for sale to potential Eligible Households at or below such Maximum Sale Price. THE MAXIMUM SALE PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE IRU, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE CITY OR DECLARANT THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM SALE PRICE. DEPENDING UPON THE CONDITION OF THE UNIT AND CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALE PRICE FOR THE IRU UPON RESALE.

(d) The Owner shall make a good faith effort to market the IRU in accordance with the requirements set forth in the AHDF Rules to purchasers that are expected to qualify as Eligible Households.

(e) The Owner may only enter into a contract for the sale of the IRU with a purchaser who is reasonably expected to qualify as an Eligible Household.

(f) The Owner may enter into a contract for the sale of the IRU upon such terms and conditions as the selling Owner shall deem acceptable, provided, however, that the following conditions apply:

(i) the purchase price shall not exceed the Maximum Sale Price;

(ii) the selling Owner must believe in good faith that the purchaser will be verified by OED as an Eligible Household; and

(iii) the contract must state as a contingency that the purchaser will submit an income verification request in accordance with Section 4 above and that the selling

Owner's obligations under the contract are expressly contingent upon the City's determination (by issuance of the Verification described in Section 4) that the purchaser is an Eligible Household and that the purchase price does not exceed the Maximum Sale Price. All earnest money must be returned in the event that the contingencies above are not met.

(g) The verification procedure described above in Section 4 shall apply to each resale of any IRU.

(h) Upon the transfer of the IRU, the purchaser must sign and record a Memorandum of Acceptance as described above in Section 5.

(h) The Director may waive the restrictions on the resale prices for IRUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent Eligible Households from buying dwelling units under the IRU program. Any waiver shall be in writing, shall reference the recorded covenant, and shall be recorded in the records of the Clerk and Recorder for the City and County of Denver, Colorado.

8. Remedies in the Event of Breach.

(a) In the event that OED has reasonable cause to believe that an Owner is violating the provisions of this Covenant, an authorized representative of OED may seek permission to enter the IRU, if necessary to determine compliance.

(b) In the event the City becomes aware of an alleged violation of this Covenant, the City or OED shall send a notice of such alleged violation to the Owner detailing the nature thereof and allowing the Owner fifteen (15) days to cure such default or request a hearing before the City using the linkage fee appeals process described in the AHDF Rules, with the Director serving as the designated official in the stead of the Director of CPD. If no hearing is requested and the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Covenant. If a hearing is held before the City, the decision of the City based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

(c) There is hereby reserved to the City, OED and the Director the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

(d) Any Owner who violates the occupancy provisions of Section 6(b) above may be required by the Director to occupy such IRU as Owner's domicile, offer the IRU for resale to an Eligible Household, and/or turn over to the City all rents received without a City exception.

(e) Subject to the limitations set forth in Section 8(f) below, in the event the IRU is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the IRU, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

(f) Notwithstanding anything in this Covenant to the contrary, in the event that the IRU is encumbered by a deed of trust from a Purchase Money First Lien Holder and such deed of trust is insured by HUD, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the

Owner's interest in the IRU; or (iii) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest any amount paid for an IRU above the Maximum Sale Price.

9. Seniority of Covenant. This Covenant is senior to all instruments securing permanent financing, except as otherwise permitted herein.

10. Release of Covenant in Foreclosure.

(a) In the event that Owner receives a notice of default or notice of foreclosure from the Purchase Money First Lien Holder, the Owner shall send a copy of said notice to OED within seven (7) days of receipt.

(b) In the event of (i) a foreclosure action being brought by the Purchase Money First Lien Holder, or (ii) the request for the Purchase Money First Lien Holder to accept title to the IRU by deed in lieu of foreclosure, the Owner shall give a copy of any notice of intent to foreclose or request for deed in lieu to OED within ten (10) days of receipt of such notice or request. Notice to OED shall be to the address of OED as provided in this Covenant with a copy to the City Attorney's Office. In the event that the Purchase Money First Lien Holder takes title to the IRU pursuant to a deed in lieu of foreclosure, the Owner shall give notice to OED with a copy to the City Attorney's Office upon the vesting of title to the IRU in Purchase Money First Lien Holder.

(c) As to any IRU encumbered by a HUD-insured mortgage, this Covenant shall automatically and permanently terminate upon foreclosure of a deed of trust or acceptance of a deed in lieu of foreclosure by a Purchase Money First Lien Holder or assignment to HUD of a purchase money first priority deed of trust encumbering such IRU. In the event of foreclosure or the acceptance of a deed in lieu of foreclosure by any other Purchase Money First Lien Holder on an IRU, the mortgagee may request the release of this Covenant with respect to that particular IRU and the Director is authorized to execute such a release if warranted by the circumstances.

(d) In a cash funded purchase following foreclosure, any and all liens or deeds filed against the property in exchange for the cash portion of the purchase shall be subordinate to the covenant placed on the unit pursuant to the requirements of these rules and regulations. Such liens or deeds will not qualify the holder as a holder of a first deed of trust, nor a purchase money first lien holder, nor under the covenant, nor under the City's Housing Funds Ordinance Administrative Rules and Regulations.

11. Limitation on Equity Mortgages. During the Covenant Period, Owner shall not cause or allow any second mortgage, refinance mortgage, or equity mortgage greater than the then-current Maximum Sale Price to be placed on or recorded against the IRU. Any action in contravention of this provision shall be void and may subject the Owner to criminal and civil fraud penalties.

12. Covenant Running with Land; Duration of Covenant. The terms of this Covenant and the provisions of the AHDF Rules shall apply to the IRUs and run with the land as a burden thereof until Final Sale, and shall be specifically enforceable by the City and its successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion or eviction of non-complying Owners and/or occupants.

13. Final IRU Sale.

(a) Assuming no previous termination due to foreclosure, this Covenant shall terminate, expire and be of no further force and effect with respect to a the IRU on the date of Final Sale.

(b) If an Owner desires to sell their IRU within ten (10) years after the end of the Covenant Period, such proposed sale shall be subject to the following requirements:

(i) Right of OED to Purchase. No less than thirty (30) days before offering the IRU for Final Sale, the Owner shall notify OED of the proposed offering and the date on which the Owner will be ready to offer the property for sale. The notice shall affirm that the property will be offered at fair market value with no extraordinary terms of sale and that it is being offered as a single property for sale. The notice shall set forth the proposed sale price, number of bedrooms, unit size by square feet, and a description of the amenities offered in the IRU.

Within thirty (30) days of OED's receipt of the notice described above, OED shall provide written notice to the Owner of the City's or its designee's intent to purchase the IRU. If the City opts to purchase the IRU, it shall complete such purchase within sixty (60) days after the date on which the notice of intent to purchase was received by the Owner. If the City does not so notify the Owner or if the purchase of the property does not close within such sixty (60) day period, the Owner may proceed to sell the IRU to any third party purchaser.

(c) Upon a finding that any and all amounts due to the City and all other provisions of this Covenant have been satisfied, the Director shall release this Covenant.

14. Notices. Any notice, consent or approval which is required or permitted to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with posting fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Covenant.

Said notices, consents and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant: _____
[Development Entity]

[Street Address]

[City, State and Zip Code]

To the City: Office of Economic Development
City and County of Denver
201 W. Colfax Avenue, Dept. 204
Denver, Colorado 80202

Copy to: City Attorney's Office
City and County of Denver
201 W. Colfax Avenue, Dept. 1207
Denver, Colorado 80202

To Owner: To be determined pursuant to the Memorandum of Acceptance (as shown on Exhibit B) recorded with respect to each Transfer of an IRU.

15. Exhibits. All exhibits attached hereto are incorporated herein and by this reference made a part hereof.

16. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such documents.

17. Conflict or Inconsistency. In the event of any conflict or inconsistency between the terms of this Covenant and the terms and provisions of the AHDF Rules, as such are in effect on the date of this Covenant, the AHDF Rules shall prevail.

18. Choice of Law. This Covenant and each and every related document are to be governed and construed in accordance with the law of the State of Colorado.

19. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties.

20. Section Headings. Paragraph or section headings within this Covenant are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

21. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Covenant. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

22. Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

23. Personal Liability. Owner shall be personally liable for any of the transactions contemplated herein.

24. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any restriction or document relating hereto or entered into in connection herewith.

25. Modifications. The parties to this Covenant agree that any modifications of this Covenant shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of the City and County of Denver, Colorado.

26. Owner and Successors. It is understood that a person or persons shall be deemed an Owner hereunder only during the period of his, her or their ownership interest in the IRU and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

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ACCEPTANCE BY DECLARANT

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year above first written.

DECLARANT: _____, a _____
[Development Entity] [State]

[Type of business organization].

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 20_____, by _____ as _____
of _____, a _____
[Development Entity] [State]

[Type of business organization].

Witness my hand and official seal.

My commission expires: _____.

Notary Public

ACCEPTANCE BY THE CITY AND COUNTY OF DENVER

The foregoing Notice of Voidable Title Transfer and Master Covenant for the Occupancy and Resale of Units _____, and its terms
[Project Name]
are hereby accepted by the City and County of Denver, Colorado.

CITY AND COUNTY OF DENVER, COLORADO

By: _____

Name: _____

Title: _____

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

The foregoing instrument was acknowledged before me this _____ day of
_____, 20_____, by _____ as _____ of the City and
County of Denver, Colorado.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

EXHIBIT A – Legal Description
EXHIBIT B - Memorandum of Acceptance

EXHIBIT A
Legal Description

UNIT _____, _____ [INSERT NAME OF PROJECT], County of _____, State of Colorado, according to the Map thereof recorded on _____, 20_____, at Reception No. _____, and the Declaration recorded on _____, 20_____, at Reception No. _____, in the records of the Clerk and Recorder of the County of _____, Colorado,

also known by street and number as: _____

EXHIBIT B

MEMORANDUM OF ACCEPTANCE OF NOTICE OF VOIDABLE TITLE TRANSFER AND MASTER COVENANTS FOR THE OCCUPANCY AND RESALE OF UNITS FOR

[Project Name]

WHEREAS, _____, the Buyer, is
[Buyer Name]
purchasing from _____, the Seller, at a price of
[Seller Name]
\$ _____, a [condominium] dwelling unit ("the IRU") described as:
[purchase price amount]
[Condominium Unit] _____,
[Project Name]
according to the Condominium Declaration for _____
[Project Name]
recorded under Reception No. _____, and the Condominium Map] of
[Project Name] recorded under Reception
No. _____,

in the real estate records of the City and County of Denver, Colorado (the "Unit"); and

WHEREAS, the Seller of the IRU is requiring as a prerequisite to the sale transactions, that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "Notice of Voidable Title Transfer and Master Covenant for The Occupancy and Resale of Units _____", recorded on
[Project Name]
_____, 20_____, under Reception No. _____, in the real property records of the City and County of Denver, Colorado (the "Master Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Acknowledges that Buyer understands that resale price and potential future buyers may be restricted and profits may be required to be shared after the termination of the Covenant.

3. Acknowledges that Buyer understands that during the term of the Covenant any attempt to obtain a second mortgage, re-finance mortgage, or equity mortgage must be first approved by OED as defined in the Master Covenant.
4. Acknowledges that Buyer understands that during the term of the Covenant no second mortgage, re-finance mortgage, or equity mortgage greater than the then current restricted Maximum Sale Price shall be legal and failure to abide by that restriction may subject owner to criminal and civil fraud penalties.
5. Notice to Buyer, pursuant to Section 14 of the Master Covenant, should be sent to:

6. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to OED.

IN WITNESS WHEREOF, the parties hereto have executed this instrument of the day and year first above written.

BUYER(S):

By: _____

Name: _____

The foregoing instrument was acknowledged before me this _____ day of _____
_____, by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT C

River Mile Escrow Draw Request & Certification

Date submitted:

SDP #:

Requested Amount of Draw:

Requested Funding Date:

Use of Funds: The funding will be used to develop Income Restricted Units within the Project.

Required Attachments:

- **Compliance Report** showing how KSE is on track to meet AHP requirements.
- **Sources and Uses** illustrating how the funds are a part of the proforma for the proposed building
- **Project Detail Sheet:** specifically showing quantity of market rate and Income-Restricted Units, that includes the specific quantity of Income Restricted Units by AMI and product type (Studio-1-2-3 bed) within the Project.

I hereby certify that all of the attached items are an accurate reflection of the proposed building to be constructed and are being requested in accordance with the AHP.

Rhys Duggan

Date

President and CEO of KSE ELITCH GARDENS / REVESCO / SECOND CITY, LLLP,
a Colorado limited liability limited partnership

The draw from the River Mile Escrow Account is:

Approved: _____ Denied: _____

As authorized by:

City Representative

Date

Exhibit C-1

EXHIBIT D

Compliance Report

River Mile Compliance Report

S/16/2025	Parcel	Total GFA	Total Units	IRU Equivalents	IRU's Delivered	Studios & 1-beds	2-beds	3-beds	3. % Afford.	Status	4. Level (Y/N)	5. Unit Mix (Y/N)	6. For Sale (Y/N)	Notes (Status & tentative development noted below)
4 Million SF	1		100	25	15	5	5	5	25.1%	Projected				
	2		475	60	36	12	12	12	12.6%	Projected				
	3		207	25	15	5	5	5	12.1%	Projected				
	4A		233	25	15	5	5	5	10.7%	Projected				
	4B		346	40	24	8	8	8	11.6%	Projected				
	4C		233	25	15	5	5	5	10.7%	Projected				
	5		145	20	12	4	4	4	13.8%	Projected				
	6		192	25	15	5	5	5	13.0%	Projected				
4 Million SF	7A		222	30	18	6	6	6	13.5%	Projected				
	7B		222	30	18	6	6	6	13.5%	Projected				
	8		328	50	30	10	10	10	15.3%	Projected				
	9		158	25	15	5	5	5	15.9%	Projected				
	10		342	50	30	10	10	10	14.6%	Projected				
	11		103	25	15	5	5	5	24.2%	Projected				
	12		121	25	15	5	5	5	20.7%	Projected				
	13		188	35	21	7	7	7	18.6%	Projected				
4 Million SF	14		184	30	18	6	6	6	16.3%	Projected				
	15		184	30	18	6	6	6	16.3%	Projected				
	16		167	30	18	6	6	6	18.0%	Projected				
	17		115	25	15	5	5	5	21.7%	Projected				
	18		98	20	12	4	4	4	20.4%	Projected				
	19		140	30	18	6	6	6	21.4%	Projected				
	20		365	50	30	10	10	10	13.7%	Projected				
	21		250	35	21	7	7	7	14.0%	Projected				
	22		258	35	21	7	7	7	13.5%	Projected				
	23		138	25	15	5	5	5	18.2%	Projected				
	24		300	50	30	10	10	10	16.7%	Projected				
	25		175	25	15	5	5	5	14.3%	Projected				
	26		374	50	30	10	10	10	13.4%	Projected				
	27		636	100	60	20	20	20	15.7%	Projected				
Total, to-date			7,000	1,050	630				15.0%					

IRU Equivalent Ratios

Studios & 1-beds 2-beds 3-beds

1.0 1.5 2.5

Status

Projected - exact units TBD (Projected)

As submitted in SDP (SDP)

As shown in Permit Documents (Permitted)

As completed at CO (Completed)

River Mile Compliance Report



Enter number - percentage calculated
Enter Y/N or (Dedicated) Market/Affordable

River Mile - Affordable Housing Plan Rules

Section 3: Affordability Percentage

15% of the residential units built shall be Income Restricted Equivalent units
 Studios & 1-bedrooms multiply times 1.0
 2-Bedrooms multiply times 1.5
 3- bedrooms multiply times 2.5

	Total Units Built	IRUs Delivered	Ratio	Equivalent Count	% of Total
	1,000	120		180	18.00%
		40	1.0	40	
		60	1.5	90	
		20	2.5	50	

Section 4: Level of Affordability

a. At least 40% of the IRUs shall serve households earning 60% AMI or lower
 a. 25% of the 60% AMI IRUs shall serve 30% AMI or less
 b. Balance of the IRUs shall serve households earning up to 80% AMI
 b. 10% of the For-Sale Units shall serve households earning up to 100% AMI

Criteria	IRUs Delivered	% of Requirement
48	50	41.7%
12	14	29.2%
72	70	

Section 5: Bedroom Mix

30% of the IRUs shall contain 2 or more bedrooms

36	80	Yes
----	----	-----

Section 6: For Sale Requirement

10% of the IRUs shall be For-Sale serving households earning up to 100% AMI

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