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**DEVELOPMENT AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS**

by and among

**CC GATEWAY OWNERS LLC**, a Colorado limited liability company

to and for the benefit of

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

**and**

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

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**DEVELOPMENT AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DEVELOPMENT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS** (this "Agreement") is made and entered into as of 16 day of July, 2020, by and among CC Gateway Owners LLC, a Colorado limited liability company and its members, managers, successors and assigns (collectively, the "Owner") to and for the benefit of Cherry Creek East Association, a registered neighborhood association in the City and County of Denver ("CCEA") and Cherry Creek North Neighborhood Association, a registered neighborhood association in the City and County of Denver ("CCNNA" and collectively with CCEA, the "Neighborhood RNOs"). Capitalized terms used in this Agreement shall have the meaning given such terms where parenthetically defined or, if not parenthetically defined, in Section 1.01 of this Agreement.

**RECITALS:**

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

B. Owner owns two parcels of real property in the City and County of Denver, State of Colorado, one containing approximately 11,228 +/- SF of land area located on the NW corner of First Avenue and Colorado Boulevard (the "CCNNA Property") and the other located on the SW corner of First Avenue and Colorado Boulevard containing 20,245 SF +/- (the "CCEA Property" and collectively with the CCNNA Property, the "Development Properties"), as the same are legally described on Exhibit A hereto.

C. Owner desires to construct a building on each of the Development Properties (each a "Building" and, collectively, the "Buildings") in the locations and with the site set-backs as substantially depicted by the site plan on Exhibit B hereto (the "Site Plan").

D. Owner has expressed its intent to develop the Development Properties and, to that end, Owner has filed application for rezoning of the Development Properties to a combination of a G-MU-5 zoning designation for the CCNNA Property to allow for stacked residential units and a G-RO-5 zoning designation for the CCEA Property to allow for residential/office uses, as such zone categories are described in Owner's rezoning application dated December 23, 2019, and to which the City has assigned the number 2019i – 00031 (relating to the Development Properties and properties located at Colorado Boulevard and Bayaud Avenue that are also owned by Owner) (the "Rezoning Application").

E. The Parties to this Agreement desire that the Development Properties be developed in a conceptually consistent and coordinated fashion (the "Projects") in CCEA and CCNNA and serving as the eastern gateway (the "Cherry Creek Gateway") to and for the benefit

of the entire Cherry Creek Area as the same is contemplated in the Denver Cherry Creek Area Plan adopted by the Denver City Council July 16, 2012 (the "Cherry Creek Area Plan").

F. The current configuration of the drive lanes for First Avenue adjacent to the Development Properties includes two turn lanes (i) one for the southbound Colorado Boulevard turn-lane turning west onto First Avenue and (ii) the other for the eastbound First Avenue turn-lane turning south onto Colorado Boulevard (collectively, the "Turn Lanes"), each of which Turn Lanes is located within the City of Denver right of way and/or the Colorado State highway under the Colorado Department of Transportation ("CDOT") and includes an existing pedestrian island for the cross-walk across First Avenue commonly referred to as the 'porkchops' (the "Cross Walk Porkchops"), which Turn Lanes and Cross Walk Porkchops are depicted on Exhibit C hereto. That portion of the proposed Projects' development including the area owned by the City of Denver and/or CDOT adjacent to the Development Properties containing the Turn Lanes and the Cross Walk Porkchops in the public rights of way are referred to collectively herein as the "Public ROW Properties" and, together with the Development Properties is collectively referred to as the "First Avenue Gateway Sites").

G. CCEA and CCNNA are the registered Neighborhood RNOs in which the Development Properties are located and, as such, Owner is required to notify CCEA and CCNNA of Owner's development and rezoning efforts and, in connection therewith, Owner has worked with such Neighborhood RNOs to disseminate information about the Projects within the CCEA and CCNNA neighborhood boundaries and sought input from the residents in the CCEA and CCNNA neighborhoods. Such efforts have resulted in the preparation by Owner and the Neighborhood RNOs of that certain Gateway rezoning letter for the Development Properties dated February 18, 2020 (the "Rezoning Conditions Letter"), which letter requires this Agreement be completed prior to proceeding through the City Planning Board Hearing Process.

H. Owner now desires to set forth the agreements with respect to the Development Properties reached with and for the benefit of the Neighborhood RNOs as contemplated by the Rezoning Conditions Letter, including its agreements concerning the land use concepts governing the Development Properties and the overall redevelopment of the First Avenue Gateway Sites and to ensure that the Development Properties will be rezoned, developed and used in accordance with this Agreement.

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

## **ARTICLE I DEFINITIONS**

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

“*Affiliated Party*” means a limited or general partner or member of Owner or any party who controls or is controlled by Owner which owns any portion of the First Avenue Gateway Sites.

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

“*Approved Development Plan*” means the site development plan for each of the Projects approved by the City, as amended from time to time, that anticipates a development program and the necessary infrastructure systems (road network, drainage, open space, utilities) to support the development on the Development Properties in a manner consistent with this Agreement. Each Approved Development Plan for each of the Projects must adhere to any restriction, prohibition or requirement made by this Agreement. Each Approved Development Plan shall be recorded by the City and provided to each of the Neighborhood RNOs.

“*Board*” or “*Boards*” means, individually or collectively, the boards of directors of CCEA and/or CCNNA, in each case as appointed or elected pursuant to the respective organizational documents and bylaws of CCEA and/or CCNNA, respectively.

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

“*Building*” or “*Buildings*” have the meanings given such terms in Recital C.

“*CCEA*” means the registered neighborhood association in the City and County of Denver for the neighborhood bounded by First Avenue on the north, Colorado Boulevard on the east, Alameda Avenue on the south, and Steele Street on the west.

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

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

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

“*CCRs*” means the covenants, conditions and restrictions imposed by Owner as the declarant of any condominium or planned community at either of the Projects under the provisions of the Common Interest Ownership Act, as the same has been codified (and as amended from time to time) in Colorado Statutes as Sections 38-33.3-101, et seq., which govern ownership, use and occupancy of any planned community or condominium units in either of the Projects and which are binding on Owner and any future owners of the developed condominium units or any planned community portion of either of the Projects, and their successors and assigns.

“*CDOT*” has the meaning given such term in Recital F.

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“*Cherry Creek Area*” means the neighborhoods and commercial district bounded by Sixth Avenue on the north, Colorado Boulevard on the east, Alameda Avenue and the actual creek known as Cherry Creek on the South, and University/Josephine on the west.

“*Cherry Creek Gateway*” has the meaning given such term in Recital E.

“*Cherry Creek Area Plan*” has the meaning given such term in Recital E.

“*Cherry Creek Area Stakeholders*” means, collectively, those organizations representing the citizens and businesses in the Cherry Creek Area and which includes CCEA, CCNNA, the Business Improvement District for the Cherry Creek North shopping district (the “*CCN BID*”), the Cherry Creek Steering Committee representing additional neighborhoods to the east, north and south of the Cherry Creek Area (including, without limitation, Hilltop, Denver Country Club Historic Neighborhood) (the “*Steering Committee*”), the Cherry Creek Business Alliance, the Cherry Creek Shopping Center, and the Owner as the owner of the Development Properties.

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

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

“*Cross Walk Porkchops*” has the meaning given such term in Recital F.

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

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

“*Development Properties*” has the meaning given such term in Recital B.

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

“*First Avenue Gateway Sites*” has the meaning given such term in Recital F, and together with all rights and appurtenances pertaining thereto.

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“*Gateway Improvements*” means the infrastructure and land uses that support the “urban center” context of the Cherry Creek Area. This includes the residential and diversified character of the neighborhood and the importance of pedestrian links and emphasis on pedestrian based travel, as such amenities are further described in the Cherry Creek Area Plan and Blueprint Denver.

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

“*Mortgage*” means any mortgage or deed of trust executed by Owner or any Affiliated Party with respect to the Development Properties, as any such document may be amended, supplemented or otherwise modified from time to time to the extent permitted herein.

“*Neighborhood RNOs*” has the meaning given such term in the initial paragraph of this Agreement.

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

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

“*Public Right of Way Properties*” has the meaning given such term in Recital F.

“*Projects*” means the mixed use residential and office developments planned to be developed on the First Avenue Gateway Sites by Owner as described in Recital E.

“*Project Improvements*” means, collectively, the residential Building improvements to be constructed on the CCNNA Property and the residential and/or office Building improvements to be constructed on the CCEA Property.

“*Recorded Covenants*” means the covenants, conditions and restrictions (including, without limitation, any CCRs for the Projects and this Agreement) recorded against the Development Properties.

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

“*Rezoning Conditions Letter*” has the meaning given such term in Recital G.

“*Site Plan*” means the conceptual site plan for the Development Properties previously shared by Owner with the Neighborhood RNOs, in substantially the form attached hereto as Exhibit B.

“*Turn Lanes*” has the meaning given such term in Recital F.



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

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

## ARTICLE II DEVELOPMENT OBLIGATIONS AND REQUIREMENTS

**Section 2.01. Development of the First Avenue Gateway Sites Generally; Process and Requirements.** The recitals set forth above are incorporated herein. In connection with the request for approval of the Rezoning Application being made by Owner to the City, and in connection with ownership, development, construction and use of the Projects on the Development Properties or on any portion of the First Avenue Gateway Sites, Owner covenants and agree as follows:

(i) **Rezoning.** Owner shall seek approval from the City for a change in the zoning for the Development Properties in a manner consistent with this Agreement. The rezoning of the CCNNA Property shall be G-MU-5 and the CCEA Property shall be G-RO-5. The Development Properties shall be further limited by, and must comply with, the restrictions in this Agreement.

(ii) **Development Process; Ongoing Communications to Neighborhood RNOs.** Owner shall notify the City of Owner's obligations under this Agreement in connection with Owner's processing of the Rezoning Application and site planning process for the Projects. In connection with the completion of the Development Documents and the site planning process for the Projects, Owner agrees to keep the Design Review Committee of the Neighborhood RNOs reasonably informed by presentation, not less than quarterly, and upon request, at the regularly scheduled meetings with the CCEA Board and the CCNNA Board or general meetings of the Neighborhood RNOs, as to the status of development of the Projects, including updates regarding the Rezoning Application, the City site planning process, and presentation of the design development of the Projects, including overall materials selected by Owner for the Projects.

(iii) **Traffic Study.** Owner shall complete a traffic study to identify and address both traffic and pedestrian issues in connection with obtaining approval of each of the Approved Development Plans. Owner shall provide a copy of the traffic study to the Neighborhood RNOs.

(iv) **Trash; Building Equipment.** Owner shall locate all trash in interior trash storage areas of the Buildings so that such areas are screened from view from adjoining properties, drives and roadways (to the extent permitted by the City). Owner shall screen roof top mechanical equipment in accordance with the City Code and shall integrate all exterior vents and intake grilles with each Building's exterior design.

(v) **Lighting.** All signage shall be in accordance with City signage requirements. Landscape and pedestrian lighting shall be installed on all street sides of the Projects. Such lighting shall be designed and installed so as to further the goal of increasing the pedestrian friendly and walkable nature of the First Avenue Gateway Sites.

(vi) **Utilities.** Owner shall, subject to utility approval, locate all utility lines, including without limitation, water, gas, telephone, electrical, and cable, underground. Owner shall locate all utility meters to the interior of the Projects (if approved by the responsible utility companies) or shall screen from view from adjoining properties.

(vii) **Alternative Transportation Strategies.** Owner shall employ all commercially reasonable efforts to encourage transportation strategies that are commensurate with Blueprint Denver and the transportation plan therein. Owner shall work with the City and CDOT to address the importance of Cherry Creek Gateway in setting the standard for other street-crossing that may be needed along East First Avenue and Colorado Boulevard. Bike parking areas shall not be located along East First Avenue or Colorado Boulevard.

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

(i) **Use and Size.** The Project Improvements on the CCNNA Property shall be residential only condominiums/apartments designed and constructed using the 'Apartment' building form as described in the Code. There shall be no more than 32,500 gross above-ground square footage in such Building with no more than 32 total residential units. No residential unit shall contain less than 900 gross square feet, including its pro-rata share of building common areas, resulting in an internal unit square footage of not less than 865 gross square feet. Building regulations and CCRs (if any) shall require that all outdoor balconies and patios shall be restricted for location of outdoor furniture and amenities and shall not be used for storage, including for the storage of bicycles or sporting equipment. Building regulations and CCRs (if any) shall require that window coverings' exterior facings/linings shall be restricted to a uniform lining or color to provide for a congruous view of the exterior of the Building.

(ii) **Parking and Access.** All parking associated with the Project Improvements on the CCNNA Property shall be below-grade parking with a single ingress/egress access drive at the northern end of the CCNNA Property on Harrison Street.

(iii) **Height and Rooftop Activation.** The Project Improvements on the CCNNA Property shall limited to four (4) above-ground stories/floors of habitable space with a maximum permitted height of 60 feet, calculated pursuant to the methods of the Code for such zone category. Rooftop activation improvements shall be allowed so long as they are set back in accordance with the requirements of the Code and do not suggest a 5th floor. The anticipated use and elevation depiction of such rooftop improvements are as shown on the Project Depictions attached hereto as Exhibit D.

**Section 2.03. CCEA Property Permitted Uses, Covenants and Restrictions.** Owner may construct, erect, use and maintain improvements permitted in the proposed G-RO-5 zone district pursuant to the City Code and as outlined in the Rezoning Application for the CCEA Property subject to the following covenants, conditions and restrictions:

(i) **Use and Size.** The Project Improvements on the CCEA Property shall be residential and/or office use only designed and constructed in a manner to be coordinated with the Project Improvements to be located on the CCNNA Property. There shall be no more than 57,500 gross above-ground square footage in such Building, with no more than 64 total residential units and/or 57,500 square feet of office space. No residential unit shall contain less than 900 gross square feet, including its pro-rata share of building common areas, resulting in an internal unit square footage of not less than 865 gross square feet. Building regulations and CCRs (if any) shall require that all outdoor balconies and patios shall be restricted for location of outdoor furniture and amenities and shall not be used for storage, including for the storage of bicycles or sporting equipment. Building regulations and CCRs (if any) shall require that window coverings' exterior facings/linings shall be restricted to a uniform lining or color to provide for a congruous view of the exterior of the Building. No "dental / medical office or clinic", as defined in Section 11.12.4.6.B.1 of the Code, as amended in the future, shall be allowed.

(ii) **Parking and Access.** All parking associated with the Project Improvements on the CCEA Property shall be below-grade parking with a single ingress/egress access drive at the southern end of the CCEA Property on Harrison Street.

(iii) **Height and Rooftop Activation.** The Project Improvements on the CCEA Property shall limited to four (4) above-ground stories/floors of habitable development space with a maximum permitted height of 60 feet, calculated pursuant to the methods of the Code for such zone category. Rooftop activation improvements shall be allowed so long as they are set back in accordance with the requirements of the Code and do not suggest a 5th floor. The anticipated use and elevation depiction of such rooftop improvements are as shown on the Project Depictions attached hereto as Exhibit D.

**Section 2.04. Site Plan and Step-down Requirements; Building Façade Design.** The Project Improvements on the Development Properties shall observe the location, massing, setback and step-down elements as shown on the Site Plan attached hereto as Exhibit B and in the Project Depictions attached hereto as Exhibit D. The elevations shown on the Projects' Depiction shall be used as a design guide, with the understanding that the exact design elements will be determined by Owner as the development proceeds. However, Owner agrees that the

final Projects' designs shall be generally consistent with the Project Depictions and Site Plan, drawings and models presented by Owner to the Neighborhood RNOs and representatives.

**Section 2.05. Contextual Design Requirements; Materials.** Owner shall construct the Projects Improvements on the First Avenue Gateway Sites in an architecturally compatible "theme", using a neutral color palate. The Buildings and site design shall relate to and be sensitive to the context of the immediate Cherry Creek North and Cherry Creek East neighborhoods as well as the larger context of the entire Cherry Creek Area. In connection with the materials used for construction of the Projects Improvements, Owner shall use only high-quality materials such as stone masonry units, stone panels, brick cast stone, metal, glass, pre-cast concrete, decorative metal panel, stucco, and similar materials that wear well and are long lasting. The Buildings design at the street level shall be designed with appropriate pedestrian scale and detailing to promote a positive pedestrian experience. Details such as change in materials above the Buildings base, awnings, canopies, lighting, pedestrian scale window treatments, green rooftops, doorways, and use of materials are encouraged. Mechanical louvers and vents located on Buildings walls shall be integrated into the Buildings design to minimize their visual impact. Owner shall construct the improvements on the First Avenue Gateway Sites in a good and workmanlike manner in accordance with the Approved Development Plan, the Denver Code, Blueprint Denver, Cherry Creek Area Plan and all applicable Legal Requirements. **Public Sidewalks and Landscaping.** Owner shall install new sidewalk and streetscape improvements on Harrison Street, 1st Avenue and Colorado Blvd. adjacent to the Development Properties, which will include separated sidewalks with tree lawns and lush landscaping. Landscape improvements shall take into account location and City forestry requirements. Xeriscaped options sensitive to water concerns may be considered and used, but no landscape areas shall consist of only rock, mulch or similar materials.

**Section 2.07. Creation of Cherry Creek Gateway.** The Neighborhood RNOs require that the First Avenue Gateway Sites include and incorporate the Cherry Creek Gateway. To that end, Owner shall facilitate the appropriate parties to implement the following requirements as a condition of the rezoning.

(i) **Intersection Reconfiguration.** Owner agrees to cause the reconfiguration of the existing intersection at First Avenue and Colorado Boulevard such that the Cross Walk Porkchops are removed, the Turn Lanes are straightened or otherwise modified to provide for a 'right turn on red only' when the traffic so allows and a portion of the surface areas comprising the Public ROW Properties previously used for the Turn Lanes and Cross Walk Porkchops are allowed to be designated and used for the eastern Cherry Creek Gateway. To the extent possible, this intersection reconfiguration will include a First Avenue median to allow for a safer pedestrian crossing. The land area comprising the Public ROW Properties gained by removal of the Turn Lanes and Cross Walk Porkchops and reconfiguration of the intersection will be set aside for use as a Cherry Creek Gateway as contemplated in the Cherry Creek Area Plan. The site development plan for each of the Projects shall include the intersection reconfiguration and area on the Public ROW Properties for use as a Cherry Creek Gateway, as described herein and depicted in the Site Plan, and the City shall not approve a site development plan without these inclusions.

(ii) **Cherry Creek Gateway Improvements.** Owner agrees to work, in good faith, to ensure that any improvements implementing the Cherry Creek Gateway concept which are to be located on the Public ROW Properties (and any portion of the First Avenue Gateway Sites, subject to Owner's approval) (collectively, the "Gateway Improvements") shall be designed and determined by a wider group of Cherry Creek Area Stakeholders, likely with or through the Cherry Creek Steering Committee with substantial input from the Neighborhood RNOs. The Gateway Improvements are to be initially installed by the Owner with the exception of the cost of sculpture art or third-party prepared elements for the Cherry Creek Gateway acquired by or for the Cherry Creek Area Stakeholders, if any. The sculpture art or third-party prepared element shall be owned by the Neighborhood RNOs or any entity formed by or in concert with them. The infrastructure for the Gateway Improvements (including, without limitation, water for irrigation or fountains and lighting) shall be installed by Owner and maintained in perpetuity by the future owner or owners of the Development Properties and the Buildings constructed thereon. The Gateway Improvements shall provide for a pedestrian experience at the base of the Project Buildings in a manner consistent with the exterior of such Buildings, including any streetscape improvements and outdoor seating, thus providing inviting areas for walking, gathering and social interaction.

(iii) **Coordination with City, CDOT and Ongoing Project Support.** A written letter from the City dated March 18, 2020 affirms Owner's and the City's intention to redevelop the Cherry Creek Gateway in conjunction with CDOT. The ownership, maintenance and future capital improvement of the Gateway Improvements and the lighting and landscape watering installation and maintenance requirements shall be confirmed as part of the overall Projects' development. Building regulations and CCRs (if any) shall require that, if Gateway Improvements are located on the Development Properties, the applicable owner association documentation for any planned community, if and as required by Colorado law, or otherwise Building regulations shall require that ongoing irrigation, water and lighting shall be paid for and provided by the respective Buildings' owners. The requirements set forth in this Section 2.07 are all subject to modifications as required by the City and CDOT, and Owner shall not be obligated to comply with any requirement set forth in this Section 2.07 if prohibited from doing so by the City or CDOT, except for the requirement that the site development plan for each of the Projects shall include the intersection reconfiguration and Gateway Improvements.

**Section 2.08. Good Neighbor Construction Practices.** Owner acknowledges that the size and density of the Projects will require the implementation of certain construction regulations in order to decrease the negative impact of such construction on the neighborhood. Accordingly, Owner agrees to implement construction practices to keep construction traffic to a minimum on side streets within the neighborhood. Owner shall implement a construction parking and implementation plan as may be required by the City and which shall incorporate the policies outlined on Exhibit E, as modified by mutual agreement between Owner and the Neighborhood RNOs. A copy of such plan shall be provided to the Neighborhood RNOs prior to commencing construction on the Development Properties.

**Section 2.09. Continuity; Design Review Committee.** Owner agree to work with the Neighborhood RNOs and their applicable zoning or development committees as the Projects

proceed. Owner agrees to meet with the Neighborhood RNOs from time to time to address matters relating to the implementation of this Agreement, not less than quarterly. Upon the request of either party thereto, the parties shall meet to discuss changes or modifications to the Projects' Site Plan that may be deemed necessary or desirable or otherwise to review changes to the Projects' design as may be required by the City or otherwise required to meet a specific need or concern of Owner in their development of the Projects.

**Section 2.10. Residential Condominium Project; CCRs.** In the event that Owner develops any portion of the Projects as a condominium or planned community project for sale to third parties, the CCRs or other declarations therefor shall refer to and be subject to the restrictions and requirements contained in this Agreement, including, without limitation, the requirements for providing lighting and water to the Gateway Improvements. Such CCRs and declarations shall also provide conditions and restrictions that are commercially reasonable with condominium for-sale product.

**Section 2.11. Neighborhood RNOs Approval; Board Participation.** The Neighborhood RNOs agree to prepare a letter in support of the Rezoning Application proposed by Owner on the conditions as outlined herein. Notwithstanding such letters of support, Owner acknowledges that there may be members or non-members of the Neighborhood RNOs who may take individual actions inconsistent with the approved actions of the Neighborhood RNOs or their respective Boards or committees. Owner acknowledges that the Neighborhood RNOs are non-profit organizations with volunteer Boards. Owner agrees to hold harmless the individual members of the Boards (whether serving prior to or as of the date of this Agreement or in the future) in their individual capacity for any loss, expenses, damages or harm accruing to Owner and resulting out of this Agreement or from and against any actions by or through the Neighborhood RNOs (acting through or under their respective Boards) in the negotiation, adoption, implementation and enforcement of this Agreement or in processing any changes hereto or in the implementation of the obligations hereunder.

**Section 2.12. Modifications to Code.** Owner agrees that (i) to the extent that the City Code is modified to relax or change any zoning or use restrictions contemplated herein, then this Agreement shall continue to control with respect to the matters so modified, and (ii) to the extent that the City Code is modified to impose more restrictive zoning and/or use requirements than those that are contemplated herein, then the modified zoning code provisions control with respect to such matters made more restricted. This Agreement shall continue to be effective notwithstanding the implementation of revisions to or restatements of the Code and shall, to the extent possible, be read to be in conformity with such Code. In the event of a conflict between the Code and this Agreement, this Agreement shall control.

### ARTICLE III BINDING NATURE OF AGREEMENT; ENFORCEMENT

**Section 3.01. Effective Date and Binding Nature of Agreement; Recorded.** This Agreement and all and each of the provisions hereof shall become effective upon its execution and delivery and shall remain in full force and effect as if fully set forth in the Rezoning Application. This Agreement or a memorandum hereof in form and substance satisfactory to the Neighborhood RNOs shall be recorded by Owner against the Development Properties in order to

restrict such parcels in accordance with this Agreement. Owner agrees that the covenants and obligations set forth herein shall be binding upon the development of the Projects and Owner agrees that, if Owner transfer the First Avenue Gateway Sites or any portion thereof, such transfer shall be subject to the provisions of this Agreement and any such purchaser shall be subject to the covenants and obligations of Owner set forth herein.

**Section 3.02. Recording of Conditions; Covenants To Run With the Land.** Owner hereby subjects the Development Properties and the First Avenue Gateway Sites to the covenants, reservations and restrictions set forth in this Agreement by Recorded Covenants, it being expressly agreed and understood that the provisions hereof are intended to survive the transfer, sale or assignment (whether by voluntary transfer, foreclosure or otherwise) of any portion of the Development Properties or the First Avenue Gateway Sites. In addition, in the event of demolition and reconstruction of the Buildings, the covenants and restrictions contained herein shall apply to any reconstruction of the Buildings on the Development Properties and, to effectuate such agreement, the restrictions contained herein shall be incorporated into the Recorded Covenants to bind any reconstruction. The Recorded Covenants and restrictions contained herein shall be recorded by Owner against the Development Properties prior to completing the rezoning under the Rezoning Application and prior to applying for any permit for construction of the Projects. The Neighborhood RNOs and Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors in title to the Development Properties. The Recorded Covenants and each and every contract, deed or other instrument hereafter executed covering or conveying the Projects or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

**Section 3.03. Burden and Benefit.** Owner hereby declares its understanding and intent that the burden of the covenants, conditions and agreements set forth herein touch and concern the land in that Owner's legal interest in the Projects and the Development Properties is burdened by the provisions of this Agreement.

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

**Section 3.05. Default; Enforcement.** If Owner (or its successors or assigns) defaults in the performance or observance of any covenant, agreement or obligation of Owner set forth in this Agreement or in any of the Recorded Covenants, then written notice thereof shall be given to Owner by the applicable Neighborhood RNO in which the defaulting Building is located, only as to the applicable defaulting Building. For purposes of the enforcement of this Agreement, the Neighborhood RNO in which the defaulting Building is located shall have a right to identify facts under which such Neighborhood RNO asserts constitute a default by Owner under this Agreement and each such Neighborhood RNO shall confirm such assertion by and through the Board for or on behalf of such Neighborhood RNO (following a formal vote of such Board in accordance with the respective organizational bylaws or adopted processes). Notwithstanding

anything herein to the contrary, nothing herein shall give any individual member of either Neighborhood RNO or any individual owner or resident within such Neighborhood RNOs or any Cherry Creek Stakeholder within any portion of the Cherry Creek Area any right to enforce the provisions hereof, it being the intent that only an action by and through the Boards of the Neighborhood RNOs have the right to take action under this Agreement. In the event that the Boards or either of them agrees that an Owner default has occurred, then the Boards (or either of them) shall deliver written notice of such default to Owner with a copy to the City (the "*Notice of Default*"). If such Notice of Default remains uncured by Owner during the sixty (60) day period following the date of such notice of default, then an "*Event of Default*" shall be deemed to have occurred hereunder as to the applicable Building; provided, however, that if the Event of Default stated in the Notice of Default is of such a nature that it cannot be corrected within 60 days, such default shall not constitute an Event of Default hereunder so long as Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected. Following the declaration of an Event of Default hereunder, this Agreement may be enforced as follows:

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

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

(iii) If the applicable Neighborhood RNO institutes any action or proceeding in court to enforce any provision hereof against Owner for breach of this Agreement or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party, as determined in such action or suit, shall be entitled to recover from the non-prevailing party all reasonable court costs and attorneys' fees incurred in connection with such proceeding, it being understood and agreed that the determination of the substantially prevailing party shall be included in the matters which are the subject of such action or suit.

(iv) Owner hereby agrees that specific enforcement of Owner's agreements contained herein is the only means by which the Neighborhood RNOs may obtain the benefits of such agreements made by Owner herein and Owner therefore agrees to the imposition of the remedy of specific performance against them in the case of any default by Owner hereunder. Notwithstanding anything herein to the contrary, nothing herein shall be deemed to require the Boards to act on any uncured Event or Default or to expend funds for enforcement of this Agreement. Any costs so expended to enforce this Agreement shall be recoverable by in accordance with Section 4.05(iii).

(v) Notwithstanding the foregoing, the Neighborhood RNOs have the right to assign their rights hereunder (including the right of enforcement) to any nonprofit entity the purpose of which is to own, oversee, manage and maintain the Gateway Improvements.



**Section 3.06. Term; Termination or Amendment of Agreement.** The Recorded Covenants shall be binding on the Development Properties for fifty (50) years from the date of this Agreement, and shall become applicable to and shall bind Owner or any Affiliated Party and all property acquired by them within the First Avenue Gateway Sites. This Agreement may be amended or otherwise terminated only upon (i) a rezoning of the First Avenue Gateway Sites (or as to any portion thereof) subsequent to the rezoning of the Development Properties pursuant to the Rezoning Application which is the subject of this Agreement so long as such further rezoning is in accordance with the rezoning procedures of the City and the Neighborhood RNOs or any then applicable registered neighborhood organizations existing under the then applicable Code are notified and given an opportunity to comment, approve or contest such rezoning and the applicability of this Agreement thereto, or (ii) by amendment or termination agreement in writing executed by Owner and the Neighborhood RNOs, including written approvals of the Boards thereof.

**Section 3.07. Reconstruction.** The provisions of this Agreement shall apply to any improvements constructed on the First Avenue Gateway Sites and to any reconstructed Project Improvements which, from time to time, may be constructed on the First Avenue Gateway Sites.

**Section 3.08. No Cross-Default between Development Properties.** The Parties acknowledge that the Development Properties may be under separate ownership or control in the future. Any default under this Agreement for one of the Buildings noticed by either CCNNA or CCEA, that continues based on applicable notice and cure period specified herein, shall constitute an Event of Default under this Agreement as to the identified Building only and shall have no impact or implication to the other Building under this Agreement.

#### ARTICLE IV MISCELLANEOUS PROVISIONS OF GENERAL IMPORT

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

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

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

**If to Owner:** CC Gateway Owners LLC  
 c/o McKinnon & Associates, LLC  
 730 17th Street, Suite 220  
 Denver, CO 80202  
 Attention: Doug McKinnon

**with a copy to:** Caitlin Quander, Esq.  
 Brownstein Hyatt Farber Schreck  
 410 17th Street, Suite 2200  
 Denver, CO 800224

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

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

**If to City:** **IN EACH CASE, WITH A COPY TO THE CITY COUNCILPERSON FOR THE DISTRICT IN WHICH THE DEVELOPMENT PROPERTY IS LOCATED.**

**Section 4.04. Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**Section 4.05. Multiple Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**Section 4.06. Third Party Beneficiaries.** The City shall be an express third party beneficiary of this Agreement. Except for the City, this Agreement is not intended nor shall it be construed to create any third-party beneficiary rights in any person who is not a party hereto unless expressly otherwise provided herein. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Development Properties (or any portion of the First Avenue Gateway Sites acquired in the future by Owner or any Affiliated Party) to the general public, it being the intention and understanding of Owner that the benefits and burdens created by this Agreement shall be limited to and for the purposes herein specified.

**Section 4.07. RECORDED COVENANTS PRIOR TO ANY MORTGAGE OR FINANCING.** It is the intention of the Parties that any mortgage or financing liens against the Development Properties entered into after the execution and recordation of this Agreement shall be subject to the Recorded Covenants. Owner shall use good faith efforts to obtain the written consent to this Agreement by Owner's current lender, in a form substantially similar to **Exhibit F** attached hereto and incorporated herein, prior to this Agreement becoming binding on the parties hereto, which consent shall be recorded concurrently with the recordation of this Agreement. Owner shall use good faith efforts to obtain lender's consent to this Agreement prior to Owner appearing before City Council seeking the Rezoning Application. Any future lender

shall consent to this Agreement via a lender consent in the form substantially similar to Exhibit F.

**Section 4.08. Integration; Controlling Documents.** This Agreement constitutes the final agreement of the parties hereto as to the matters set forth herein. This Agreement controls as to any prior term sheet, outline or other communications regarding the Project and the Neighborhood RNO's positions with respect thereto.

**Section 4.09. Termination of Agreement.** Should the Denver City Council fail to approve the Rezoning Application or approve the Rezoning Application with conditions unacceptable to Owner which cause Owner not to proceed with the Projects, or if the approved rezoning is challenged / appealed without resolution allowing Owner to proceed with the Projects as anticipated, within one hundred eighty (180) days after the date of this Agreement, then this Agreement is automatically void without further action of the Owner or the Neighborhood RNOs and shall no longer burden title to the Development Properties, unless the Owner and Neighborhood RNOs mutually agree to extend this 180 day time period in writing. If this condition precedent is not met, and if requested by the Owner, the Neighborhood RNOs will execute and record a document evidencing that this Agreement was deemed void.

**[Remainder of page intentionally left blank]**

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

Owner:

CC GATEWAY OWNERS LLC,  
a Colorado limited liability company

By: 

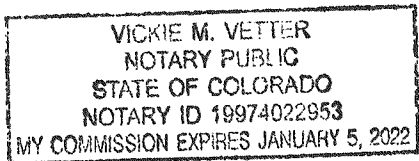
Doug McKinnon, Manager

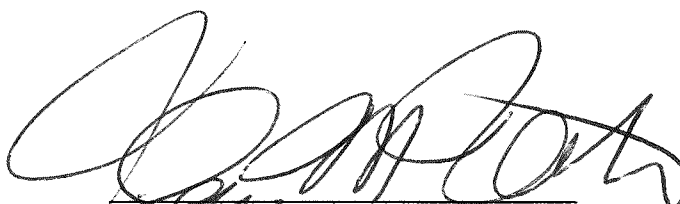
STATE OF COLORADO )  
CITY AND ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of July, 2020, by Doug McKinnon, as Manager of CC GATEWAY OWNERS LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 1-5-2022

[S E A L]



  
Notary Public (or official title)

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

NEIGHBORHOOD RNOs

Cherry Creek East Association

By: *[Signature]* *John Fredenick*

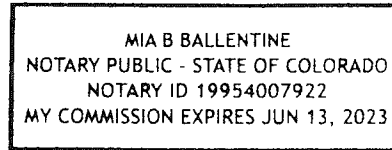
Acting CCEA Board President, on behalf of the CCEA Board and as approved by the CCEA Board by Resolution dated *approved and ratified July 14, 2020.*

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

The foregoing instrument was acknowledged before me this *13<sup>th</sup>* day of *July*, 2020, by *John Fredenick*, as President of Cherry Creek East Association, a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: *June 13 2023*

[SEAL]



*[Signature]*  
Notary Public (or official title)

*AT r*

Cherry Creek North Neighborhood Association

By: *Milou Raders*

Acting CCNNA Board President, on behalf of the CCNNA Board and as approved by the CCNNA Board by Resolution dated June 25, 2020.

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

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of July, 2020, by Milou Raders, as President of Cherry Creek North Neighborhood Association, a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires: Jun 13 2023

[SEAL]

MIA B BALLENTINE  
NOTARY PUBLIC - STATE OF COLORADO  
NOTARY ID 19954007922  
MY COMMISSION EXPIRES JUN 13, 2023

*Mia Ballentine*  
Notary Public (or official title)

at ✓

**EXHIBIT A**  
**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTIES**

**CCNNA PROPERTY:**

LOTS 1 TO 6, INCLUSIVE,

EXCEPT THAT PART OF SAID LOTS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1;

THENCE WESTERLY ON THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 6.16 FEET;

THENCE SOUTHERLY ON A LINE PARALLEL WITH THE EAST LINE OF BLOCK 9 A DISTANCE OF 69.38 FEET TO A POINT OF CURVE;

THENCE SOUTHWESTERLY ON A CURVE COVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 85 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 6 AND 71.12 FEET WEST OF THE SOUTHEAST CORNER THEREOF;

THENCE EASTERLY ON THE SOUTH LINE OF LOT 6 TO THE EAST LINE OF BLOCK 9;

THENCE NORTHERLY ON THE EAST LINE TO THE POINT OF BEGINNING,

BLOCK 9,

BURLINGTON CAPITOL HILL ADDITION,

CITY AND COUNTY OF DENVER, STATE OF COLORADO

Containing 11,228 +/- sq. ft

**CCEA PROPERTY:**

Parcel I:

THOSE PARTS OF LOTS 1 AND 2, BLOCK 10,

BURLINGTON CAPITOL HILL ADDITION,

LOCATED WITHIN BOUNDARIES DESCRIBED:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2;

THENCE NORTHERLY ON THE WEST LINE OF SAID LOTS 2 AND 1, 38 FEET;

THENCE SOUTHEASTERLY TO A POINT WHICH IS 27.45 FEET SOUTH OF THE NORTH LINE OF SAID LOT 1 AND 60.62 FEET EAST OF THE WEST LINE OF SAID LOTS 1 AND 2;

THENCE SOUTHEASTERLY TO THE SOUTHEAST CORNER OF SAID LOT 2;

THENCE WESTERLY ON THE SOUTH LINE OF SAID LOT 2 TO THE POINT OF BEGINNING,

CITY AND COUNTY OF DENVER, STATE OF COLORADO

Containing 2170 +/- sq. ft.

Parcel II:

LOTS 3, 4 AND 5, BLOCK 10

BURLINGTON CAPITOL HILL ADDITION,

CITY AND COUNTY OF DENVER, STATE OF COLORADO

Containing 6769 +/- sq. ft.

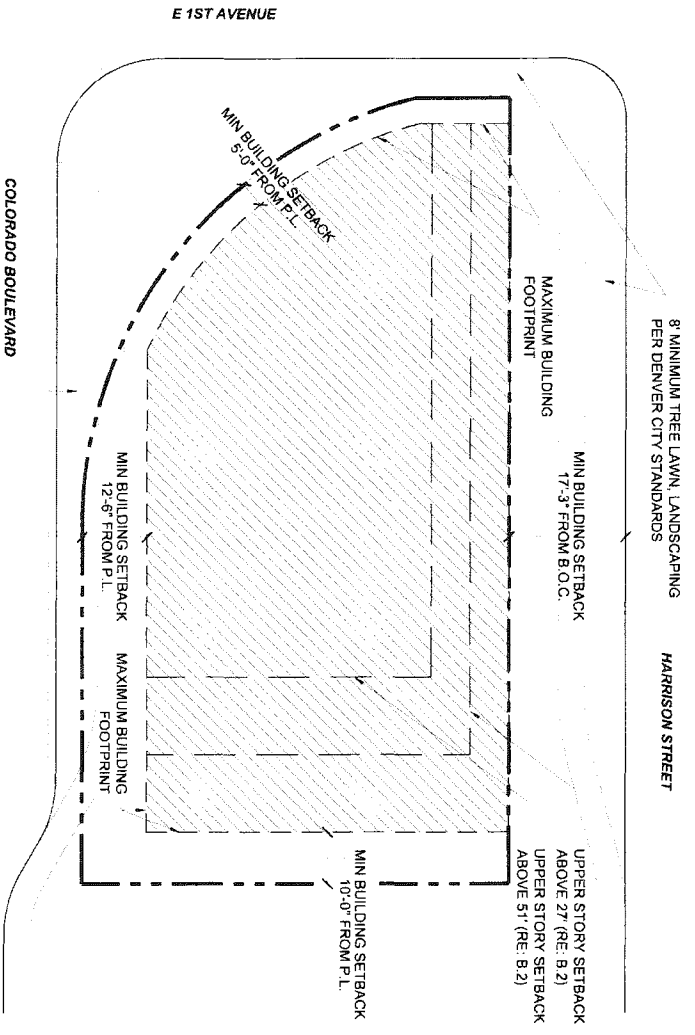
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# EXHIBIT B SITE PLAN

## EXHIBIT B.1

101 COLORADO BLVD, DENVER CO  
REVISED FEBRUARY 26, 2020



### SITE PLAN REQUIREMENTS

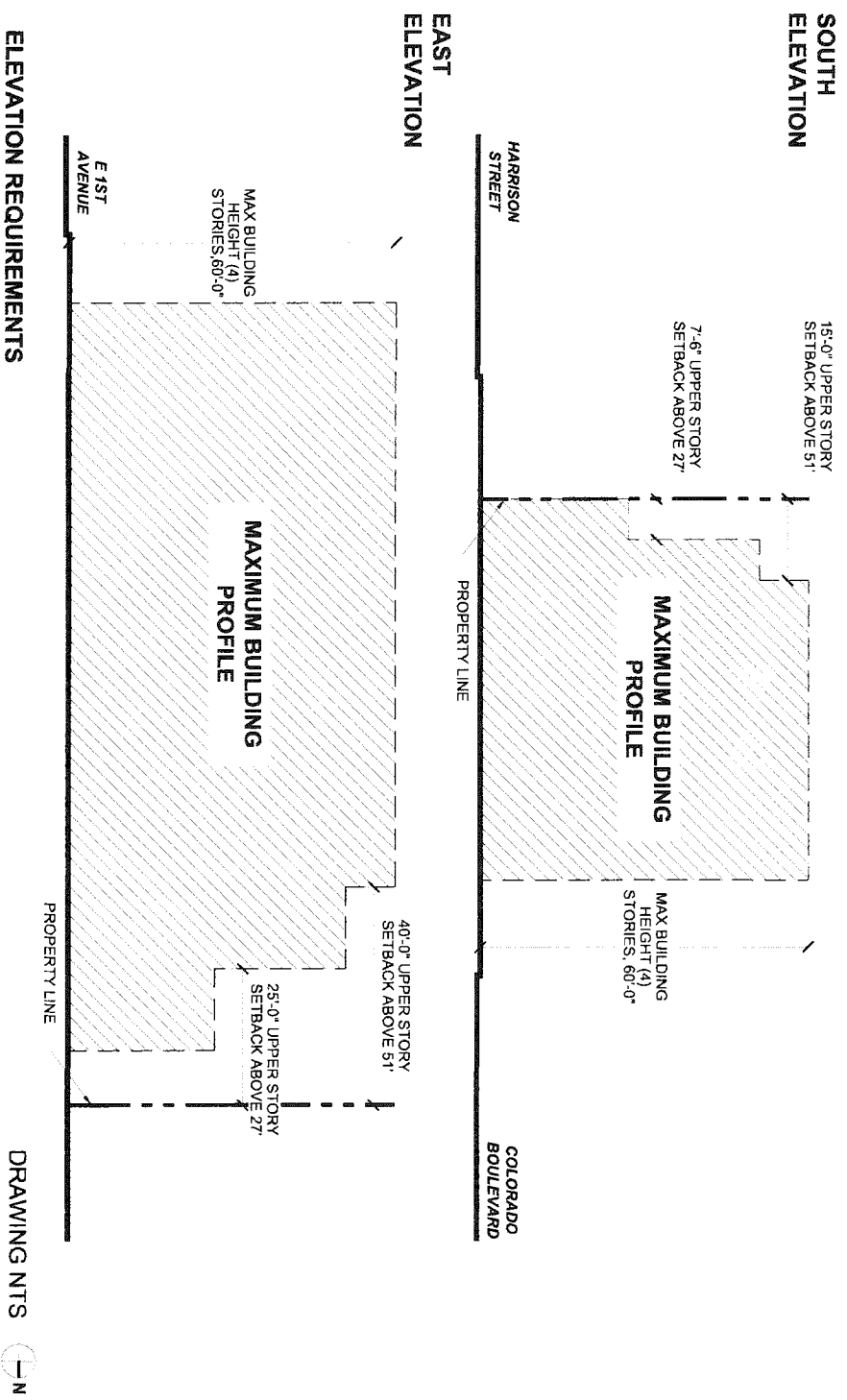
- NOTES
1. ALL NEW SIDEWALKS SHALL BE 6'-0" MINIMUM WIDTH AND TIE INTO EXISTING SIDEWALKS ALONG COLORADO BOULEVARD AND HARRISON STREET
  2. MINOR ARCHITECTURAL ELEMENTS SHALL BE ALLOWED TO ENROACH INTO SETBACKS PER THE DENVER ZONING CODE
  3. IN ALL RESPECTS, THE DETAIL AND FINAL DESIGN OF THE FOREGOING IMPROVEMENTS WILL BE FINALIZED DURING THE SITE DEVELOPMENT REVIEW PROCESS.

DRAWING NTS






**EXHIBIT B.2**  
101 COLORADO BLVD, DENVER CO  
REVISED FEBRUARY 26, 2020



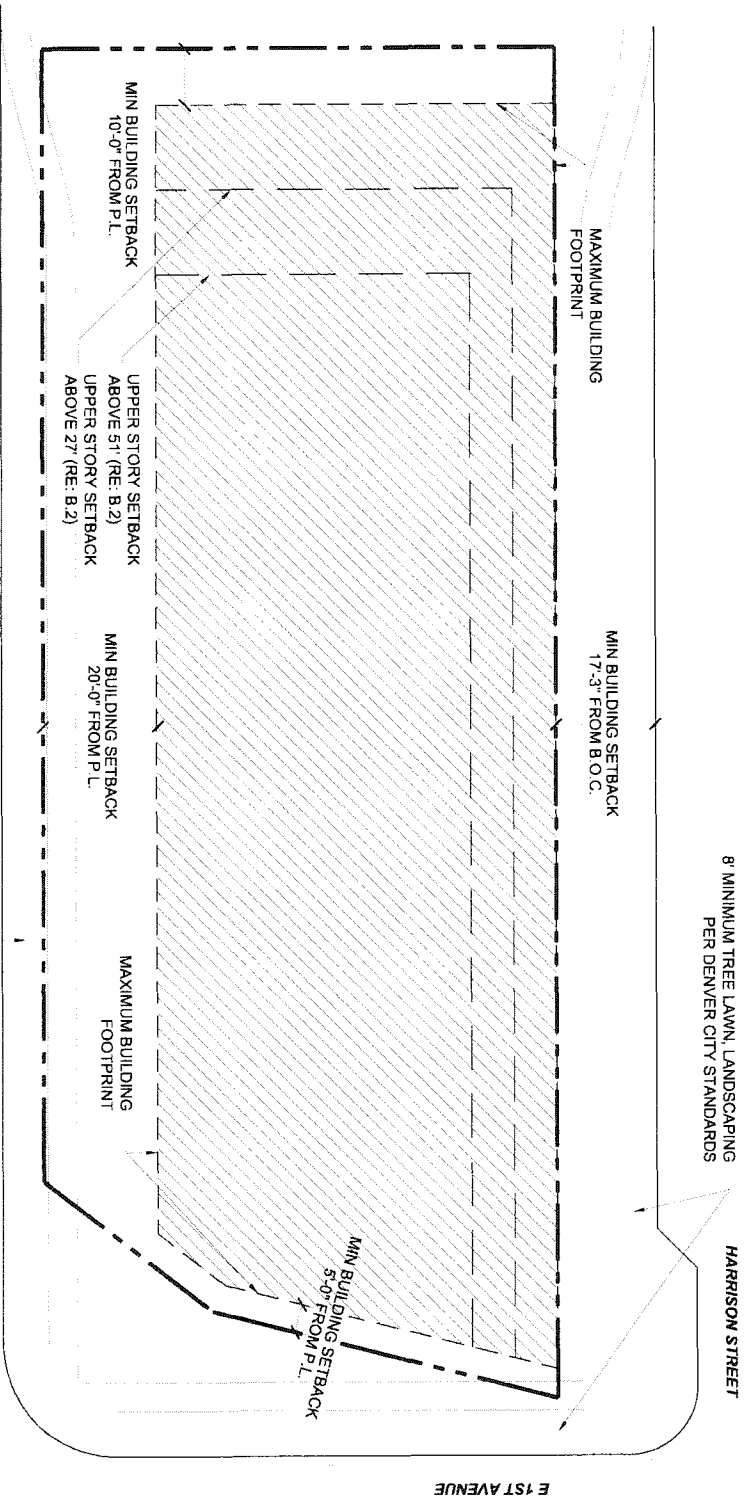
**ELEVATION REQUIREMENTS**

- NOTES
1. ALL VERTICAL DIMENSIONS, INCLUDING NUMBER OF STORIES, ARE MEASURED FROM THE BASE PLANE AS DEFINED BY THE DENVER ZONING CODE.
  2. ALLOWED HEIGHT EXCEPTIONS PER THE DENVER ZONING CODE SHALL REMAIN PERMISSIBLE.
  3. A ROOFTOP AMENITY PENITHOUSE (ABOVE LEVEL 4) BUILT WITHIN THE LIMITS OF THE DENVER ZONING CODE SHALL BE DEMONSTRATED. THIS PENITHOUSE SHALL INCLUDE LIMITED INTERIOR SPACE ANCILLARY TO PRIMARY LIVING SPACES BELOW. NO DWELLING SPACES SHALL BE LOCATED WITHIN THIS PENITHOUSE AND THE PRIMARY FUNCTION OF ALL ENCLOSED SPACE SHALL BE FOR THE PURPOSE OF ACCESS AND USE OF ADJACENT OUTDOOR TERRACES.
  4. UPPER STORY SETBACKS ARE MEASURED FROM THE PROPERTY LINE, EXTENDING TO THE SPECIFIED HEIGHT FROM THE BASE PLANE AND THEN HORIZONTALLY TO THE SPECIFIED SETBACK DISTANCE.
  5. VERTICAL OR SLOPED WALLS ENCLOSING THE ROOFTOP AMENITY PENITHOUSE SHALL BE SET BACK FROM THE PERIMETER OF THE BUILDING A MINIMUM OF ONE FOOT HORIZONTALLY FOR EVERY ONE FOOT OF VERTICAL HEIGHT, STARTING FROM A POINT 60'-0" ABOVE THE BASE PLANE. THIS RESTRICTION IS MEANT TO BE SIMILAR TO REQUIRED SCREENING FOR ROOFTOP ENCROACHMENTS PER SECTION 7.3.7.1 OF THE ZONING CODE.

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**EXHIBIT B.1**  
 97 COLORADO BLVD, 98 HARRISON ST AND 45-51 COLORADO BLVD, DENVER CO  
 REVISED FEBRUARY 26, 2020



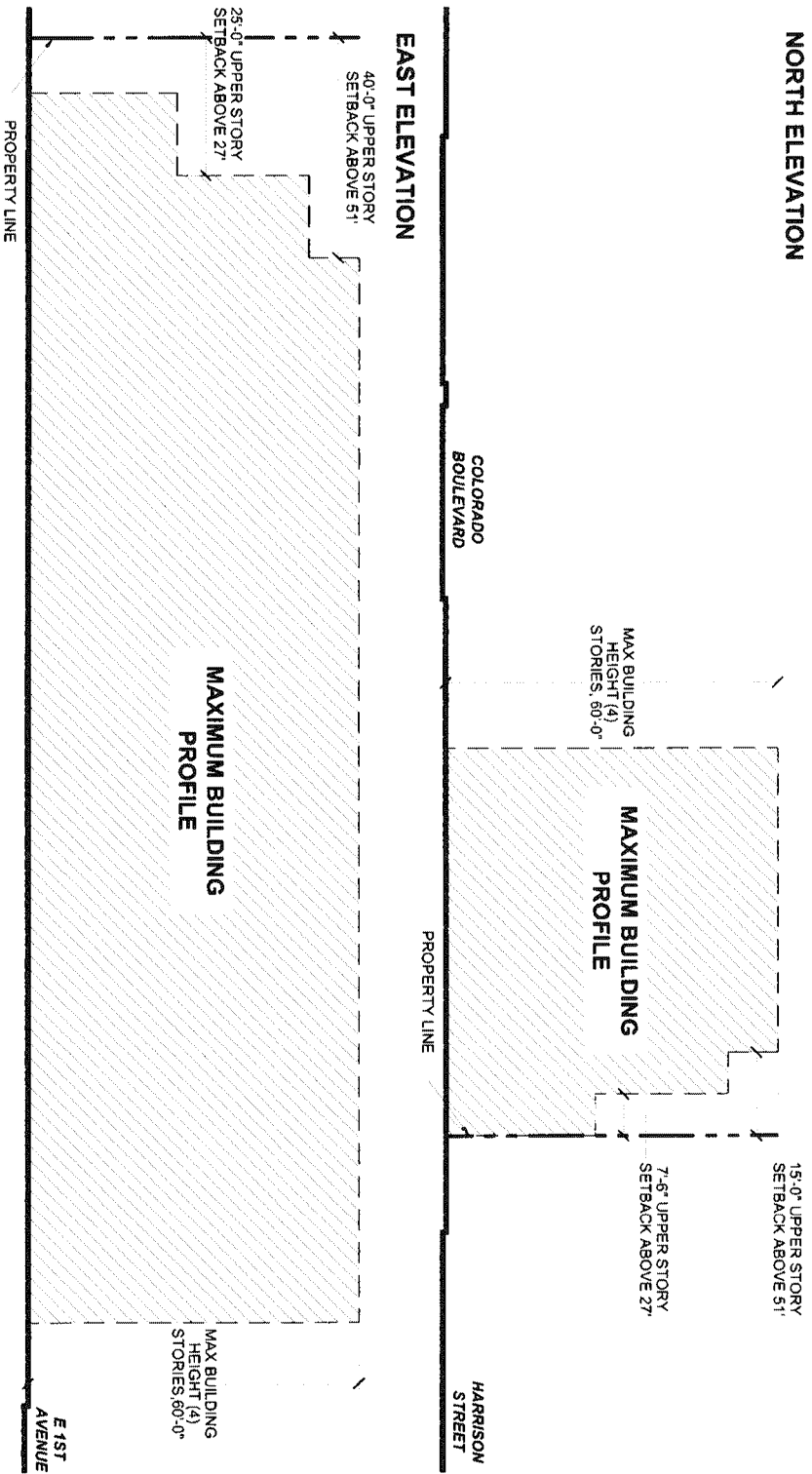
**SITE PLAN REQUIREMENTS**

- NOTES**
1. ALL NEW SIDEWALKS SHALL BE 5'-0" MINIMUM WIDTH AND THE INTO EXISTING SIDEWALKS ALONG COLORADO BOULEVARD AND HARRISON STREET.
  2. MINOR ARCHITECTURAL ELEMENTS SHALL BE ALLOWED TO ENCRUCH INTO SETBACKS PER THE DENVER ZONING CODE.
  3. IN ALL RESPECTS, THE DETAIL AND FINAL DESIGN OF THE FOREGOING IMPROVEMENTS WILL BE FINALIZED DURING THE SITE DEVELOPMENT REVIEW PROCESS.

DRAWING NTS



**EXHIBIT B.2**  
 97 COLORADO BLVD, 98 HARRISON ST AND 45-51 COLORADO BLVD, DENVER CO  
 REVISED FEBRUARY 26, 2020



**ELEVATION REQUIREMENTS**

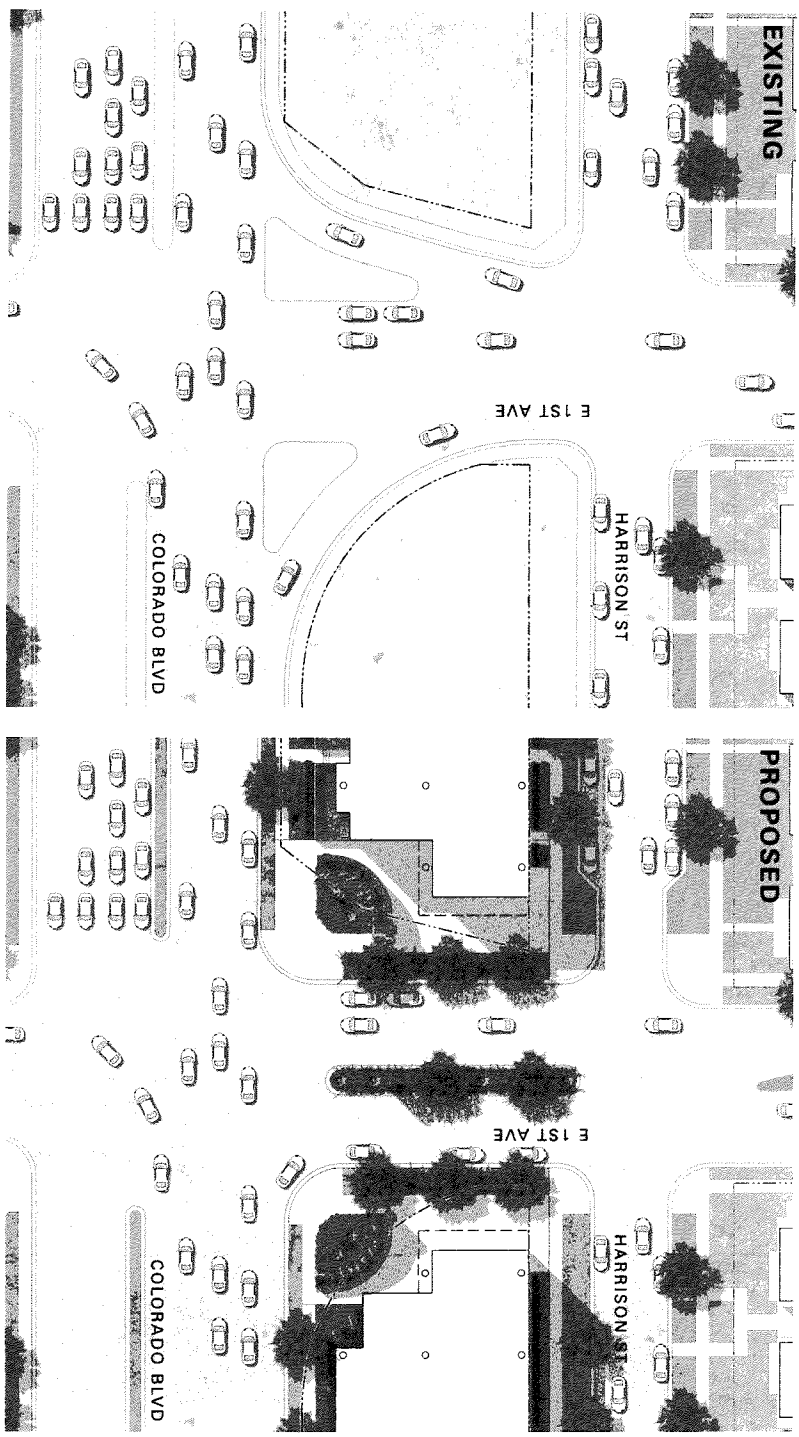
**DRAWING NTS**

- NOTES
1. ALL VERTICAL DIMENSIONS INCLUDING NUMBER OF STOREYS ARE MEASURED FROM THE BASE PLANE AS DEFINED BY THE DENVER ZONING CODE.
  2. ALL OVERHEAD WIRE EXPOSURES ABOVE THE DENVER ZONING CODE SHALL REMAIN PERMISSIBLE.
  3. A ROOFTOP AMENITY ENCLOSURE SHALL BE SET BACK FROM THE PERIMETER OF THE BUILDING AS REQUIRED BY THE DENVER ZONING CODE. THIS PERMITTED ROOFTOP AMENITY ENCLOSURE SHALL BE PERMISSIBLE. THIS PERMITTED ROOFTOP AMENITY ENCLOSURE SHALL INCLUDE LIMITED INTERIOR SPACE ANCILLARY TO PRIMARY LIVING SPACES BELOW. NO DWELLING SPACES SHALL BE LOCATED WITHIN THIS PERMITTED ROOFTOP AMENITY ENCLOSURE AND THE PRIMARY FUNCTION OF ALL ENCLOSED SPACE SHALL BE FOR THE PURPOSE OF ACCESS AND USE OF ADJACENT OUTDOOR TERRACES.
  4. UPPER STORY SETBACKS ARE MEASURED FROM THE PROPERTY LINE EXTENDING TO THE SPECIFIED HEIGHT FROM THE BASE PLANE AND THEN HORIZONTALLY TO THE SPECIFIED SETBACK DISTANCE.
  5. VERTICAL OR SLOPED WALLS ENCLLOSING THE ROOFTOP AMENITY PERMITTED ENCLOSURE SHALL BE SET BACK FROM THE PERIMETER OF THE BUILDING A MINIMUM OF ONE FOOT HORIZONTALLY FOR EVERY ONE FOOT OF VERTICAL HEIGHT STARTING FROM A POINT 80'-0" ABOVE THE BASE PLANE. THIS RESTRICTION IS MEANT TO BE SIMILAR TO REQUIRED SCREENING FOR ROOFTOP ENCROACHMENTS PER SECTION 7.3.7.1 OF THE ZONING CODE.

Handwritten marks: a checkmark and the number '5'.

EXHIBIT C  
TURN LANES AND CROSS-WALK PORK CHOP DEPICTION

**1st Avenue Gateway** Streetscape Improvements



Handwritten marks resembling 'M' and 'N' with arrows pointing towards the diagrams.

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**EXHIBIT D  
DEPICTION OF PROJECTS**

**Gateways East**  
Cherry Creek, Colorado

McKimmon & Associates, LLC  
TRYBA ARCHITECTS

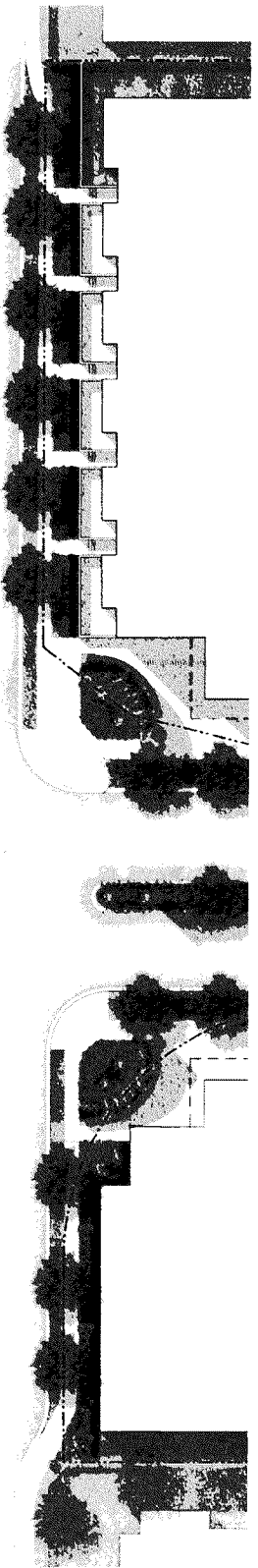
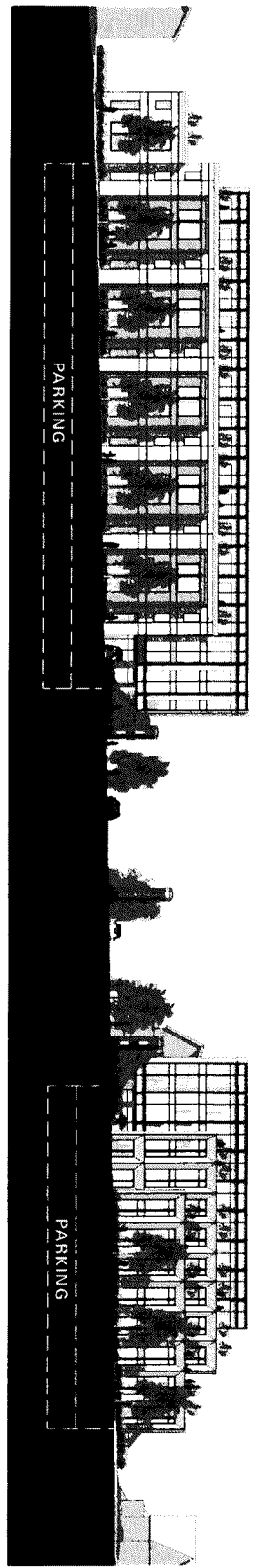
**Massing Update: 4-Story Building Elevations**  
February 23, 2020

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ELEVATION AND SITE PLAN

**1st Avenue Gateway**

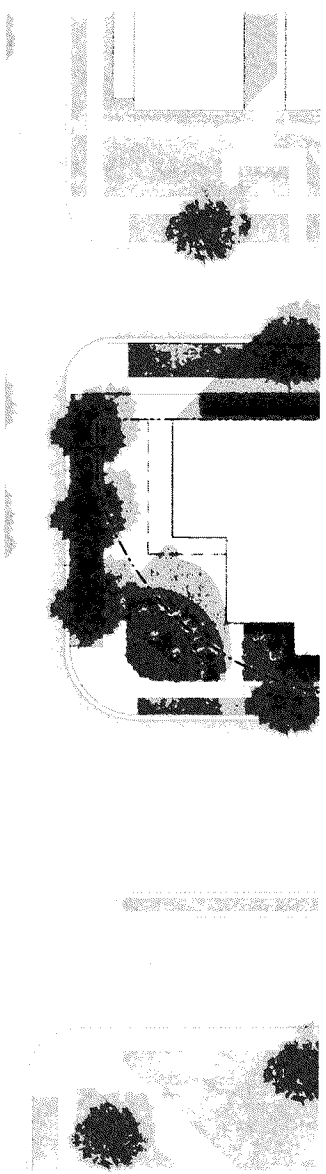
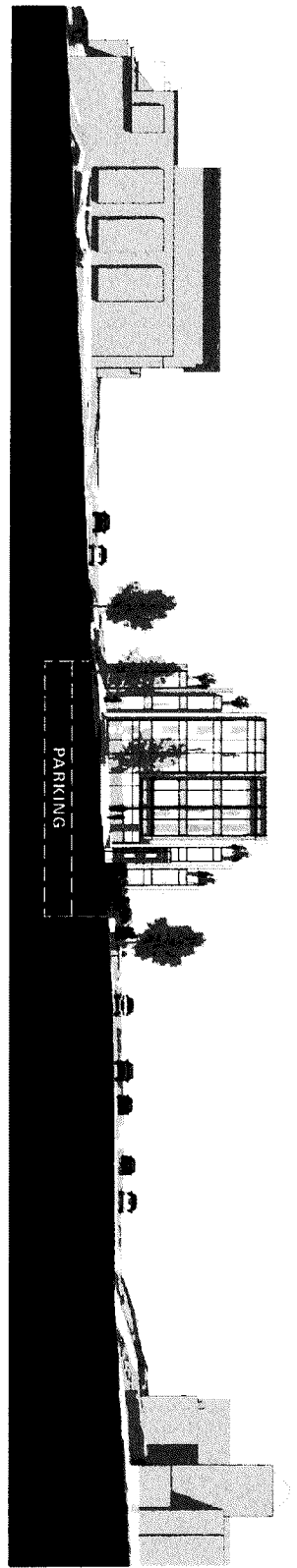
McKINNON & ASSOCIATES, LLC · TRYBA ARCHITECTS  
23 FEBRUARY 2020



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ELEVATION AND SITE PLAN

**1st Avenue Gateway**

McKINNON & ASSOCIATES, LLC • TRYBA ARCHITECTS  
23 FEBRUARY 2020



D-3

## EXHIBIT E GOOD NEIGHBOR CONSTRUCTION POLICY

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

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

### Owner will adhere to the “4 C’s”

Communication with Neighbors Can Facilitate Cooperation and Support

The 4-C Solution:

1. Communication: Builders who communicate while attempting to limit the impact that construction invariably causes will win the tolerance of the neighboring residents. A sign on the site, a flyer, a letter to residents in the immediate area explaining the project and the anticipated schedule can alleviate much of the residents’ concerns about the short-term problems commonly generated by construction.
2. Common Sense: While it is the nature of construction to be messy, noisy and paced to meet the pressure of deadlines and budgets, neighborhood sites require special consideration. Neighbors and builders must acknowledge the root of the situation – the area is both a neighborhood, where people retreat from the work-a-day world, and a job site, where time is money and money is the bottom line. Residents’ concerns arise when construction practices continually go beyond the limits of common sense.
3. Courtesy: Builders can work to the limit of the law, which allows construction noise from 7 AM to 9 PM seven days a week. Thoughtful contractors who make the effort to schedule the more disruptive aspects of the project to take place during weekdays between 8 AM and 5 PM should expect few complaints from the surrounding residents. Builders who respect neighbors’



concerns and take action to remedy or modify a problem will find that that kind of consideration should gain friendly support during the project. By responding with common courtesy, the contractor may attract a future project from another homeowner.

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

#### **GUIDELINES FOR BUILDERS**

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

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

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

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

**EXHIBIT F  
CONSENT OF LIENHOLDER**

The undersigned lienholder (the "**Lienholder**"), holder of a leasehold deed of trust lien on the Development Properties, recorded in the real property records of the City and County of Denver, Colorado ("**Records**") on \_\_\_\_\_, at Reception No. \_\_\_\_\_ ("**Deed of Trust**"), hereby consents to and approves the terms, covenants and provisions of the Development Agreement and Declaration of Restrictive Covenants recorded in the Records on \_\_\_\_\_, 20\_\_\_\_, at Reception No. \_\_\_\_\_ ("**Agreement**") and agrees that the Agreement shall not be extinguished, limited or affected to any extent by any foreclosure of the Deed of Trust.

IN WITNESS WHEREOF, the undersigned has caused this Consent of Lienholder to be signed by its duly authorized officer(s) on its behalf, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**LIENHOLDER:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Representative

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

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

AT

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