Notification of Special Meeting

To: GURA Board of Commissioners
From: Steve Glueck, Executive Director /Recording Secretary
Date: November 19th, 2014
RE: Special Meeting Notification

Pursuant to the Section 3 of the Bylaws of the Golden Urban Renewal Authority, a special meeting is being called by the Recording Secretary on written request by Chair Miller. The Authority is hereby providing you at least twenty-four hours written notice regarding the special meeting to all board members of the authority. This written notice is being left at your usual place of residence.

This meeting will take place at Golden City Council Chambers located at 911 10th Street, Golden, Colorado 80401 on Thursday, November 20th at 6:30 p.m.

The purpose of this meeting is to discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest to the real property known as “Lots 2 and 4 Golden Gateway Station Minor Replat #2” which are bounded by 12th and 13th Streets and Prospectors Alley, all located in Golden, CO 80401.

At this special meeting no business shall be considered other than as designated in this specific notification, but if all of the members of the Authority are present at a special meeting, any business which may lawfully come before a regular meeting may be transacted at that special meeting.
GOLDEN URBAN RENEWAL AUTHORITY
SPECIAL MEETING
Golden City Council Chambers
911 Tenth Street
November 20th, 2014
6:30 p.m.

******************************************************************************

1. Call to Order

2. Roll Call

3. Public Comment

4. Resolution 137 Approval of Amended Disposition and Development Agreement

5. Adjourn
Memorandum

To: GURA Board of Commissioners
From: Steve Glueck, Executive Director and Aleah Menefee, Redevelopment Specialist
Date: November 19th, 2014
RE: November 20th Special meeting Memo

This memo will provide you with background information for the specific item to be discussed at the upcoming GURA meeting.

**Resolution 137 Approving an Amended Disposition and Development Agreement and Associated Subordination and Standstill Agreement** —Enclosed in your meeting packet is Resolution 137 which allows GURA to approve an amended Disposition and Development Agreement with Golden West Office, LLC. On November 10th, 2014 GURA voted to approve a Disposition and Development Agreement with the Developer subject to certain amendments, which are shown in the revised Disposition and Development Agreement and associated Subordination and Standstill Agreement.

Upon review of all of GURA’s changes, the developer has indicated that the proposed lender will not agree to one specific change that amended the Standstill Agreement such that the proposed five month “standstill period” during which the lender will not convey the property would occur prior to initiating foreclosure proceedings rather than between initiating such proceedings and a conveyance. Accordingly, the board is being asked to delete that change from your approval. The developer has accepted all other changes reflected in the documents attached to Resolution 137. The board’s action at this time are to either approve or deny Resolution 137, to authorize the amended Disposition and Development Agreement. Resolution 137 removes the change inserted by the GURA board on November 10th, and allows the five month period to be after initiation of foreclosure proceedings.

If the resolution is approved, the parties will move to execution of the documents. If not, the prior approval of Resolution will stand as approved on November 10th.
Please also put this in packet

From: Chris Ernst [mailto:Chris.ernst@aresllc-properties.com]
Sent: Wednesday, November 19, 2014 12:51 PM
To: Steve Glueck
Subject:

Steve below is what Karen Klerman with the bank proposed to supply the board monthly.

Chris,
Sorry I missed your call this morning but I have been in meetings most of the day.

To answer your question, I would propose that GURA receive some sort of monthly construction status update. It might be a compliance certificate from the General Contractor or an email from me.

Information might include the following:
- Percent complete
- Estimated completion date/discussion of whether the project is on schedule
- % of GMP contingency used
- % of Owner contingency used
- Change orders/scope changes
- Presale status (# of presales, purchase price, earnest money deposit)

Chris Ernst
CEO/President
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Steve yesterday we spoke about what we need from the GURA board. Per my conversations with the banks outside legal counsel as well as other lenders that the standstill agreement was not only problematic but not an option. We spoke at length about the protections in place for GURA. We accepted the other changes that were requested by GURA but cannot proceed with the standstill agreement as the bank will not finance with that in place.

The banker said she could keep GURA in the loop with Monthly draw schedule updates as well as construction updates as they have inspectors onsite to make sure the loan draws are appropriate. I am sure when the board has the opportunity to understand the banks position and the protection already afforded that we should be able to pass resolution 136 with out the 5 month standstill agreement. Thank you for the assistance in this matter.

Chris Ernst
CEO/President
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RESOLUTION 137

A RESOLUTION OF GOLDEN URBAN RENEWAL AUTHORITY APPROVING AN AMENDED DISPOTION AND DEVELOPMENT AGREEMENT WITH GOLDEN WEST OFFICE LLC, A COLORADO LIMITED LIABILITY COMPANY.

WHEREAS, the Golden Urban Renewal Authority (GURA) is a body corporate and has been duly created, organized, established and authorized to transact business and exercise its powers as an urban renewal authority within the City of Golden under the Colorado Urban Renewal Law, C.R.S. 31-25-101 et seq; and

WHEREAS, by City of Golden City Council Resolution No. 1078, adopted December 28, 1989, the City adopted the Golden Urban Renewal Plan (the Plan), as such Plan may be amended from time to time, and designating the area delineated therein as an urban renewal area (the Plan Area) within the meaning of the Urban Renewal Law, designating the Plan Area as appropriate for urban renewal, and offering support of redevelopment within the Plan Area to halt and/or eliminate blight; and

WHEREAS, GURA owns the Property, which is located in the Plan area; and

WHEREAS, in furtherance of the Plan, GURA initiated a competitive bidding process that included a public request for qualifications and redevelopment proposals (RFP 2013-01) relating to the Property; and

WHEREAS, in response to the proposal submitted by the Developer, GURA entered into negotiations with the Developer for the transfer and development of the Property in two Phases beginning on July 16, 2013; and

WHEREAS, on November 10, 2014 GURA voted to approve a Disposition and Development Agreement with the Developer subject to certain amendments as shown in the attached Exhibit A; and

WHEREAS, GURA and the Developer wish to further amend the Disposition and Development Agreement by removing one of the changes approved by Resolution 136. Disposition and Redevelopment Agreement (Exhibit A);

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE GOLDEN URBAN RENEWAL AUTHORITY THAT:

The Disposition and Development Agreement with Golden West Office LLC and the associated Subordination and Standstill Agreement, are approved substantially in the form attached hereto as Exhibit A, except that the recent insertion in section 6.b. in the attached Subordination and Standstill Agreement of the words “..commence any action to..” regarding the standstill period shall be deleted. The GURA chair is authorized to execute the revised agreement.
Adopted this __________ day of __________, 2014.

______________________________  ______________________________
Doug Miller, Chair              Steve Glueck, Executive Director
Golden Urban Renewal Authority  Golden Urban Renewal Authority
THE GOLDEN URBAN RENEWAL AUTHORITY,
the Authority

AND

GOLDEN WEST OFFICE LLC
the Developer

DISPOSITION AND DEVELOPMENT AGREEMENT

Dated as of November [__], 2014
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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into as of November __, 2014, by and between the GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “Authority”) and GOLDEN WEST OFFICE LLC, a Colorado limited liability company (the “Developer”).

RECITAL

The Authority made a public request for qualifications and redevelopment proposals (RFP 2013-01) and entered into negotiations for the disposition and development of downtown Lots 2&4 dated July 16, 2013. The Authority and Developer wish to proceed with the redevelopment of the Property in accordance with the Act and the Plan.

WHEREAS, the City has approved the Plan, pursuant to which the Authority is charged with remedying blighted conditions within certain designated areas of the City;

WHEREAS, the Authority owns the Property, which is located within the Plan area;

WHEREAS, in furtherance of the Plan, the Authority initiated a competitive bidding process that included a public request for qualifications and redevelopment proposals (RFP 2013-01) relating to the Property;

WHEREAS, in response to the proposal submitted by Developer, the Authority entered into negotiations with Developer for the transfer and development of the Property in two Phases;

WHEREAS, the Authority and Developer wish to proceed with the redevelopment of the Property in accordance with the Act, the Plan, and the terms hereof.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

SECTION 1. DEFINITIONS AND PURPOSE

1.1 Definitions.

“Act” means the Colorado Urban Renewal Law, article 25 of title 31, C.R.S., as amended.

“Authority’s Financing” means the financing described in Section 7.2.

“Authority Parking Structure” means that certain existing parking structure owned, operated and maintained by the Authority on property adjacent to the Property.

“Certificate of Completion” means the certificate described in Section 9 and attached as Exhibit F.

“City” means the City of Golden, Colorado.
“City Council” means the City Council of the City of Golden, Colorado.

“Commencement of Construction” means, for each Phase, the visible commencement by the Developer of actual physical operations on the Property for the erection of the Private Improvements, including, without limitation, grading, obtaining a foundation permit for the Private Improvements included in such Phase and commencement of excavation of the Property for footings, foundations or caissons.

“Completion of Construction” means, for each Phase, the issuance by the City of a Certificate of Occupancy for all of the Improvements that the Developer is required to construct hereunder in such Phase.

“Deed” means each of the Phase 1 special warranty deed and the Phase 2 special warranty deed, each in the form attached as Exhibit E.

“Default” and “Event of Default” mean those events specified in Sections 15.1 and 15.2.

“Development Plan” means the Phase 1 Development Plan and the Phase 2 Development Plan.

“Developer” means GOLDEN WEST OFFICE LLC, a Colorado limited liability company and its successors and assigns, including MINERS POINT LLC that conform with the requirements of Section 12.

“Developer’s Financing” means the financing described in Section 7.1.

“Development Tracts” means Lots 2 and 4 of the Property, each a “Development Tract” for purposes of this Agreement.

“Effective Date” means the date first set forth in this Agreement.

“Environmental Laws” mean any international, federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention, ordinance or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste, or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, if any, applicable to the Property, including without limitation the following: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Act, the Hazardous Substances Transportation Act, the Federal Water Pollution Control Act, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Rivers and Harbors Appropriation Act, the
Endangered Species Act, the National Environmental Policy Act, the Oil Pollution Act, and any state or local law, and any state statute or local ordinance implementing the same, and any further amendments thereto and all rules and regulations promulgated thereunder.

“Hard Costs” mean costs and expenses actually paid by the Developer for labor, materials and equipment used for site preparation, excavating, grading, landscaping, constructing, providing tenant finish, reports, testing, inspections or otherwise constructing the Improvements; provided that any costs or expenses contributed, incurred or paid by the Authority or the City or included in the computation of Soft Costs shall not be included in Hard Costs.

“Hazardous Substance” means any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined, prohibited, limited or regulated under any statute, law, ordinance, rule or regulation of any local, state, regional or Federal authority having jurisdiction over the Property, or its use, including but not limited to any material, substance or waste that is (a) defined, listed or otherwise classified as a hazardous substance, hazardous material, hazardous waste or other words of similar meaning under any Environmental Laws; (b) petroleum, petroleum hydrocarbons, and all petroleum products; (c) polychlorinated biphenols; (d) lead; (e) urea formaldehyde; (f) asbestos and asbestos containing materials; (g) flammables and explosives; (h) infectious materials; (i) atmospheric radon at levels over 4 picocuries per cubic liter, (j) radioactive materials; or (k) defined, prohibited, limited or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any Environmental Laws.

“Holder” means the beneficiary under a Mortgage.

“Improvements” mean the Private Improvements and the Public Improvements.

“Mortgage” means and includes a deed of trust, leasehold deed of trust or other instrument creating an encumbrance or lien upon the Property or any portion thereof as part of the Developer’s Financing.

“Party” or “Parties” means a party or the parties to this Agreement.

“Permitted Exceptions” mean those exceptions to the title to the Property that are permitted pursuant to Section 4.4.

“Phase” or “Phases” means one or more of the phases for development of the Property as described in Section 3.1.

“Phase 1 Development Plan” means the Developer’s concept for redevelopment of the Phase 1 Property described in Exhibits B-1 and B-2.

“Phase C-1” means the commercial phase of the Development Plan described in Section 3.1.a and Exhibit B.

“Phase C-2” means the commercial phase of the Development Plan as described in Section 3.1.b and Exhibit B.
“Plan” and “Urban Renewal Plan” mean the Golden Urban Renewal Plan (a.k.a. Golden Downtown Redevelopment Plan), approved by the City Council of the City on December 31, 1989, by Ordinance No. 1078, as such Plan may be amended from time to time.

“Private Improvements” mean those improvements that the Developer is required to construct pursuant to Section 3.

“Property” means the real property described in Exhibit A.

“Restrictive Covenant” means the Restrictive Covenant described in Section 5.3.

“Schedule of Performance” means Exhibit C, the schedule that governs the times for performance by the Parties.

“Soft Costs” mean reasonable fees and expenses of architects, surveyors, engineers, accountants, attorneys, construction managers and other professional consultants; real property taxes and assessments; direct salary and overhead expenses; development fees, reasonable administration and overhead charges that do not exceed what is normally charged for such services in the Denver Metropolitan Area; permit charges; costs of operating the Improvements prior to issuance of a Certificate of Completion; marketing costs, commissions (including both those paid to employees and those paid to third parties), allowances to tenants, and other costs of initial project lease-up; all interest, loan fees and other costs of obtaining and maintaining Developer’s Financing; and other commercially recognized costs that are incurred by the Developer in connection with the acquisition, ownership, development, operation and marketing of the Property and the Improvements; provided that any costs or expenses contributed, incurred or paid by the Authority, the City or the Golden Civic Foundation or included in the computation of Hard Costs shall not be included in Soft Costs.

“Standstill Agreement” means the Standstill Agreement described in Section 13.1.

“Title Company” means First American Title Insurance Company unless otherwise agreed in writing by the Parties.

“Use Covenant” means the Use Covenant described in Section 5.1.

1.2 Purpose. The purpose of this Agreement is to further the goals and objectives of the Act by providing for the redevelopment of the Property pursuant to the Development Plan. The Authority has determined that the redevelopment of the Property in accordance with the Agreement conforms with the Plan and the Act.

SECTION 2. DESCRIPTION OF REDEVELOPMENT AND IMPROVEMENTS

The Developer agrees to acquire and redevelop the Property described in Exhibit A in accordance with the Development Plan by constructing the Improvements in Phases as described herein. All construction required of the Parties by this Agreement shall be undertaken and completed in accordance with the Schedule of Performance (Exhibit C), the Development Plan, all applicable laws and regulations, including City codes and ordinances, the Urban Renewal Plan and shall be performed in accordance with and subject to the terms and conditions of this Agreement.
SECTION 3. DEVELOPER’S CONSTRUCTION OBLIGATIONS

3.1 Developer Obligations. In accordance with and subject to this Agreement, the Developer shall commence, diligently pursue and complete the construction of the Improvements within the time periods specified in the Schedule of Performance. The Developer shall undertake construction of the Improvements in the sequence of Phases specified below and in the Schedule of Performance; provided, however, the Developer may accelerate the construction of any Phase by submitting evidence reasonably satisfactory to the Authority that the Developer has obtained Developer’s Financing, including lease and/or sales commitments, sufficient to achieve Completion of Construction of such Phase. The covenants regarding such construction and completion shall run with the land until Completion of Construction and are binding for the benefit of the Authority and enforceable by the Authority against the Developer and its successors and assigns.

a. 13th Street (Phase C-1). On or before the respective dates specified in the Schedule of Performance, the Developer shall complete all steps necessary to undertake Commencement of Construction and Completion of Construction of the Private Improvements required for Phase C-1; provided, however, the Developer may request from the Authority approval to extend the Commencement of construction of Phase C-1 for a maximum of two (2) successive periods of thirty (30) days each by giving the Authority notice of such request of at least ten (10) days prior to the commencement date of each period of extension. Approval by the Authority shall not be unreasonably withheld.

b. 12th Street (Phase C-2). On or before the respective dates specified in the Schedule of Performance, the Developer shall complete all steps necessary to undertake Commencement of Construction and Completion of Construction of the Private Improvements required for Phase C-2. In the alternative, the Developer may request from the Authority approval to delay such dates with respect to Phase C-2 only by a period of not to exceed one year upon written notice to the Authority of its request to do so. Approval by the Authority shall not be unreasonably withheld.

3.2 Progress Reports. Until Completion of Construction, the Developer shall make monthly reports in such detail as may reasonably be requested by the Authority and the City, as to actual progress of the Developer with respect to the Commencement of Construction, the progress of construction and the Completion of Construction for each Phase.

SECTION 4. TITLE MATTERS

4.1 Conveyance; Closing. In accordance with the Schedule of Performance, Lots 2 and 4 of the Property ("Development Tract” or “Development Tracts”) shall be conveyed to the Developer for nominal consideration of ten dollars ($10.00) per Lot. At the time specified for the closing (the “Closing”) of the conveyance of each Development Tract set forth in the Schedule of Performance (i.e. simultaneous with the closing of Developer’s Financing for each Phase), and subject to the terms, covenants and conditions of the Agreement, the Authority shall convey to the Developer title to each Development Tract for redevelopment in the sequence of phases required by this Agreement. Each Closing shall take place at the office of the Title Company, unless the Parties agree otherwise in writing.
4.2 Form of Deed; Recording. At the Closing, the conveyance of each Development Tract will be accomplished by execution of the Deed. Each Deed shall be subject to the Permitted Exceptions described in Section 4.4. Such Deed shall be subject to all the terms, conditions and requirements of the Agreement and title to each Development Tract shall be in the condition required by Section 4.4. After delivery by the Authority, the Developer shall promptly record the Deed with the Clerk and Recorder for Jefferson County, Colorado. The Developer shall pay all recording costs, including the state documentary fee, if any. Simultaneous with the execution of the Deed, the Authority shall execute easement documents granting Developer easements in and on the Authority Parking Structure as detailed in Exhibit I.

4.3 Title Review. The Authority has provided Developer with a title insurance commitment (the “Commitment”) for a 2006 ALTA form issued by the Title Company for an owner’s title insurance policy on the Title Company’s standard form (the “Title Policy”) for the Property. Developer has approved the Commitment and the Survey (defined below).

The Title Company shall provide to both Parties, at least thirty (30) days prior to the Closing for each Development Tract, updated Title Documents and a written agreement assuring the Developer that the Title Company will insure against matters affecting title in violation of the Agreement (which have not been previously waived by Developer) and that came of record or are otherwise discovered (and which are not due to the activities of Developer) since the date of the last Commitment and the time of the recording of the Deed for such Development Tract. It shall not be necessary for the Developer to object to any title matters to which the Developer has previously objected that appear on any subsequent Commitment or Commitment update. Such items shall be deemed to be a violation of this Agreement and subject to the cure provisions of this Agreement as of the date of the original objection by the Developer.

4.4 Condition of Title. Any Title Policy issued by the Title Company insuring title to the Property shall not include the standard preprinted exceptions 1 through 5 and Authority agrees to provide the Title Company, at its cost, with all documents requested by Title Company necessary to remove the standard preprinted exceptions 1-5 (provided, however, the Authority shall not be responsible for any additional costs associated with the deletion of such exceptions). Title to each Development Tract shall be free and clear of all liens, defects and encumbrances, except the following Permitted Exceptions: (a) the Agreement, including those terms included in the Deed or any other document of record; (b) the Urban Renewal Plan; (c) those matters, including easements and rights of way that are part of the Development Plan, or are approved, accepted, or waived by the Developer; (d) easements for existing utilities that will continue in use under, and do not unreasonably interfere with, the Development Plan; (e) easements for the basement garage and a public access loading zone, which encumber approximately 6-7 feet along the westerly border of each Development Tract; (f) taxes and assessments not yet due and payable; (g) the Use Covenant; and (h) the Restrictive Covenant.

4.5 Title Insurance Policies. Promptly after recordation of each Deed, and upon satisfaction of each requirement set forth in the Commitment, the Title Company shall issue the Title Policy in accordance with the Commitment(s) described in Section 4.3 and the provisions of Section 4.4. In no event shall the Authority be responsible for a failure by the Title Company to issue the Title Policy, unless such failure is the direct result of a failure by the Authority to convey title in accordance with the terms hereof. The Developer shall be responsible for all costs of the
Title Policy and any title insurance commitments, policies or endorsements required by the Developer or its mortgagees. The Developer shall provide the Authority with a copy of all title insurance policies and endorsements issued to the Developer and its mortgagees.

SECTION 5. USE AND OTHER RESTRICTIONS.

5.1 Twelve Month Use Restrictions. In order to effectuate the twelve month use restrictions on 13th Street, Phase 1, and on 12th Street, Phase 2, as set forth in Exhibit B-1 hereto, at prior to each Closing the Authority shall deliver-execute and Developer shall cause to be recorded, a covenant in the form attached hereto as Exhibit H (the “Use Covenant”), which covenant shall run with the land in each Phase for a period of twelve months respectively following issuance of a Certificate of Completion, for each Phase.

5.2 Additional Use Restriction – Authority Garage Connection. The Parties acknowledge that the current design as set forth in Exhibit B contemplates that the Project will include access into the sub-surface level of the Project through a connection to the subsurface level of the Authority Parking Structure. Developer acknowledges that any such connection must be constructed, if at all, in compliance with the building code adopted by the City of Golden, and in compliance with any conditions and interpretations imposed by the City’s Building Official or designee. Additionally, such connection may not be constructed until Developer has executed additional documents providing reasonable assurances to the Authority regarding insurance, indemnification, and security of the Authority Parking Structure during and arising out of construction of such connection.

5.3 Development Restrictions. In order to effectuate the provisions of this Agreement, at prior to each Closing the Authority shall deliver-execute and Developer shall cause to be recorded, a covenant in the form attached hereto as Exhibit H-1 (the “Restrictive Covenant”), which covenant shall run with the land in each Phase until the issuance of a Certificate of Completion for such Phase.

SECTION 6. PREPARATION OF PROPERTY FOR REDEVELOPMENT

6.1 Intentionally Deleted.

6.2 Zoning. The Property is zoned C-2. The Parties covenant that they will not seek any zoning changes, exclusive of the Special Use Permit referenced in this Agreement, that interfere with accomplishment of the Development Plan or otherwise preclude compliance with the Agreement without consent of the Authority.

6.3 Authority’s Environmental Studies. The Authority shall provide to Developer copies of all reports and assessments with regard to the Development Tracts which are currently in its possession, including but not limited to, Phase I and Phase II Environmental Site Assessments, Asbestos and Lead Based Paint Surveys, if any.

6.4 “As Is” Nature of Transaction. Except as specifically provided herein, the Authority has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied, (a) concerning or with respect to the presence of Hazardous Substances on the Property or compliance of the
Property with any and all applicable Environmental Laws and (b) the value, nature, quality or condition of the water, soil and geology of the Property. The Developer acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property, as provided for herein, is made on an “As Is” condition and basis. The Developer and anyone claiming by, through or under the Developer hereby fully and irrevocably releases the Authority and its successors from any and all claims that it may now have or hereafter acquire against the Authority, its commissioners, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Property or any portion thereof, except claims arising out of breaches of the representative and warranties contained herein. It is understood and agreed that the purchase price has been adjusted by prior negotiation to reflect that all of the Property, or any part thereof, is sold by the Authority and purchased by the Developer subject to the provisions of this Section 6.4.

6.5 Inspections, Soils and Environmental Tests. Within the time specified in the Schedule of Performance, and at its expense, the Developer may make any tests, surveys, inspections or obtain any audits, tests or studies of soils and subsurface conditions, including environmental tests on or about the Property to determine its suitability for construction of the Improvements and to determine if Hazardous Substances exist or have been stored on the Property. Promptly upon receipt, the Developer shall deliver copies of all of such audits, tests, studies or reports to the Authority. The Authority shall permit the Developer and its representatives access to the Property at reasonable times for the purpose of conducting such tests, inspections and surveys. No charge shall be made for the access provided in this section. A party entering upon the Property pursuant to this section shall reasonably restore the Property to its condition prior to any such entry and the Developer shall indemnify and hold harmless the Authority in connection with such entry for one (1) year following termination of the Agreement.

6.6 Access to Property. Prior to issuance of a final Certificate of Completion, the Developer shall permit representatives of the Authority and the City access to the Property at all reasonable times for the purpose of carrying out or determining compliance with the Agreement, the Urban Renewal Plan or any City code or ordinance, including, without limitation, inspection of any work being conducted on the Property; provided, that any such inspection will not unreasonably interfere with Developer’s construction work or any tenant’s use of the Improvements. No compensation shall be payable to the Parties, nor shall any charge be made in any form by any Party for the access provided in this section. A party, including the Authority, entering upon the Property pursuant to this section shall reasonably restore the Property to its condition prior to such entry, and shall indemnify and hold harmless the Developer for any loss or damage or claim for loss or damage (including reasonable legal fees) resulting from any such entrance, tests and surveys.

6.7 Updated Survey. The Authority has provided Developer with an updated survey dated August 14, 2014. The Authority has no further obligation with respect to a survey.

6.8 Intentionally Deleted.

6.9 Dedications; Developer Not to Construct Over Utility Easements. The Developer shall dedicate, as appropriate, all easements, public streets, alleys and rights of way required by the
Development Plan and applicable City requirements. The Developer shall not construct any building or other permanent structure other than planters, landscaped areas, surface parking and public plazas, on, over (except for roof or canopy overhangs approved by the City and the Authority) or within the boundary lines of any easement for public utilities unless such construction is provided for in such easement, is not inconsistent with the purposes of such easement or has been approved by the City.

6.10 Temporary Signage. The Authority will allow the Developer to place a temporary sign or signs (as approved by the City and the Authority) on appropriate parts of the Property for marketing purposes.

SECTION 7. DEVELOPMENT FINANCING

7.1 Developer’s Financing. In accordance with the Schedule of Performance, the Developer will submit to the Authority evidence reasonably satisfactory to the Authority that the Developer has applied for and obtained necessary Developer’s Financing for each Phase of the Development Plan. Such evidence shall be sufficiently complete to enable the Authority to reasonably verify that the Developer has the legal and financial ability to construct, complete and open the Improvements in such Phase. The Developer’s Financing shall also include evidence that the Developer has (a) signed a construction contract that meets the requirements of the Developer’s construction Mortgage for construction of the Improvements for the Phase in question and (b) satisfied all conditions precedent to issuance of a building permit by the City other than those conditions which are the responsibility of the Authority or are directly contingent on the closing for such Phase. The parties agree that the Authority shall, to the extent of its legal ability to do so and in compliance with the Colorado Open Records Act, C.R.S. 24-72-201 et seq. (“CORA”), protect financial documents furnished under this Section 7.1 shall protect from inspection by, or disclosure or distribution to, any third party. Copies of all financial documents shall be returned to the Developer after Completion of Construction. The Authority acknowledges that the financial documents furnished under this Section 7.1 constitute privileged, proprietary, confidential trade secret, financial or commercial communication pursuant to CORA. The Authority shall send to the Developer a copy of any such request for disclosure of such information within one (1) business day of the Authority’s receipt.

7.2 Intentionally Deleted.

7.3 Cooperation Regarding Financing. The Parties will cooperate and provide such reasonable assistance and information (including disclosure of names of members and investors of the Developer) as may be required in connection with the Developer’s Financing. Each Party agrees to give favorable consideration to reasonable changes in this Agreement or in related documents that may be requested by prospective lenders, the City or others providing financial assistance hereunder, provided that the rights of such Party are not adversely affected by such changes.
SECTION 8. PLAN SUBMITTAL AND REVIEW PROCEDURE

The Authority has approved the Development Plan. The Developer may further request that the City approve a Special Use Permit to allow more than 75% residential as provided in Chapter 18.32 of the municipal code, as more particularly detailed in Exhibit B-1. No further approval of the Development Plan by the Authority shall be required except with respect to any material change in the Development Plan (or any component thereof). If the Developer desires to make any material change in the Development Plan, the Developer shall submit the proposed change to the Authority for its approval, with an explanation of the justification for the proposed change. The Authority shall endeavor to provide an approval or rejection of the proposed changes within thirty (30) days of such submittal and approval shall not be unreasonably withheld or delayed. All work with respect to the construction of the Improvements shall conform with the approved Development Plan and all applicable laws, codes and ordinances.

SECTION 9. CERTIFICATE OF COMPLETION

Promptly after Completion of Construction of each Phase and receipt by the Authority of a copy of the Certificate of Occupancy issued by the City for each Phase, the Authority will furnish the Developer with a Certificate of Completion in the form attached as Exhibit E. Issuance of a Certificate of Occupancy by the City shall be conclusive evidence that the Improvements have been constructed as required under this Agreement. The Certificate of Completion shall be a conclusive determination of Developer’s satisfactory completion of the obligations and covenants arising under its agreements with the Authority.

SECTION 10. SAFETY; INDEMNIFICATION; INSURANCE

10.1 Protection of Persons and Property. At all times while this Agreement is in effect, the Developer shall take reasonable precautions to prevent damage, injury or loss (to persons and property as a direct result of Developer’s design, inspection and construction activities on the Property). The Developer shall comply with all applicable safety laws, regulations and building codes, and shall post danger signs and other warnings notifying employees and members of the public of all construction hazards. The Developer shall promptly remedy physical damage to the Property caused in whole or in part by the Developer, its contractors and subcontractors or anyone employed directly or indirectly by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible, except for damage or loss attributable to acts or omissions of the Authority, the City or their contractors or subcontractors or anyone directly or indirectly employed by the Authority or the City or their contractors or subcontractors.

10.2 Indemnification; Insurance. The Developer shall defend, indemnify, and hold the Authority, its commissioners, officers and employees, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys’ fees and costs), which may be caused by any of the Developer’s design, inspection and construction activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement, except for damage or loss attributable to acts or omissions of the Authority, the City or their contractors or subcontractors or anyone directly or indirectly employed by the Authority or the
City or their contractors or subcontractors. At all times while the Developer is engaged in preliminary work on the Property or adjacent streets and during the period from the Commencement of Construction until Completion of Construction of all Phases, the Developer shall carry and, upon request, will provide the Authority with valid certificates of insurance as follows:

   a. Builder’s risk insurance (with a deductible reasonably acceptable to the Authority) in an amount equal to 100% of the replacement cost of the Improvements at the date of Completion of Construction;

   b. comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance), automobile and umbrella liability insurance with a combined single limit for both bodily injury and property damage reasonably acceptable to the Authority;

   c. worker’s compensation insurance, with statutory coverage, including the amount of deductible permitted by Colorado Law.

   The policies of insurance required under subparagraphs a through c above shall be reasonably satisfactory to the Authority, placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written notice to the Authority and the City in the event of cancellation or change in coverage and shall name the Authority and the City as additional insureds.

10.3 Repair or Reconstruction. The Developer shall immediately notify the Authority and the City of any damage to the Improvements exceeding $50,000. If the Improvements are damaged or destroyed by fire or other casualty prior to the Completion of Construction, the Developer shall, subject to the terms and conditions of a Mortgage, proceed forthwith to repair, reconstruct and restore the damaged Improvements to substantially the same condition or value as existed prior to the damage or destruction, and the Developer, or whoever receives the proceeds, shall apply the proceeds of any insurance relating to such damage or destruction to the payment or reimbursement of the costs of such repair, reconstruction and restoration.

SECTION 11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Authority. The Authority represents and warrants as follows:

   a. The Authority is an urban renewal authority duly organized and existing under applicable law and has the right, power, legal capacity and the authority to enter into the Agreement and has authorized the execution, delivery and performance of this Agreement by proper action of its Board of Commissioners.

   b. The Authority knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of the Authority or its officials with respect to the Project, this Agreement or the Improvements that has not been disclosed to the Developer.
c. The filing or service of any such suit affecting any Phase prior to the delivery of a Certificate of Completion for such Phase shall be disclosed immediately to the Developer by the Authority.

11.2 Representations and Warranties by the Developer. The Developer represents and warrants as follows:

a. The Developer is a limited liability company duly organized, validly existing and is in good standing under the laws of the State of Colorado. The Developer has the right, power, legal capacity and authority and has duly authorized the execution, delivery and performance of this Agreement by proper action of its Members.

b. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by the Agreement will not (1) violate any law, rule, order or regulation applicable to the Developer or to the Developer’s governing documents; (2) result in the breach or default under any agreement or other instrument to which the Developer is a party or by which it may be bound or affected; or (3) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the Developer.

c. The Developer knows of no action, suit, proceeding or investigation that is threatened or pending against the Developer or its principals that has not been disclosed to the Authority that materially impairs the ability of the Developer to perform its obligations under the Agreement. The filing or service of any such suit affecting any Phase prior to the delivery of a Certificate of Completion for such Phase shall be disclosed immediately to the Authority by the Developer.

d. Subject to obtaining the Developer’s Financing, the Developer has the necessary financial and legal ability to construct the Improvements, perform the Agreement and the other agreements incidental to such performance as contemplated by this Agreement.

SECTION 12. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

12.1 Prohibition Against Transfer of Property and Assignment of Agreement. The Developer agrees that it shall not make, create, or suffer to be made or created, any total or partial sale or transfer in any form of the Agreement or the Property or the Improvements or any part thereof or any interest therein, or any agreement to do the same, prior to delivery of a Certificate of Completion by the Authority without the prior written approval of the Authority, except as follows:

a. a Mortgage;

b. the leasing or rental to tenants;

c. the establishment of easements to effectuate the Development Plan;

d. the creation of an Association and recordation of documents in furtherance thereof;
e. Assignment of its rights with respect to the Phase 2 to Miners Point LLC, an affiliate of Developer, subject to Miners Point LLC assuming all of Developer’s obligations hereunder for Phase 2.

f. agreements to sell, lease or transfer all or part of the Property or the Private Improvements (except for leasing or rental or rental to tenants of the Private Improvements) after the delivery of a Certificate of Completion, if such agreement does not provide for payment of the purchase price or rent prior to the delivery of a Certificate of Completion;

g. or, the execution of bona-fide sales agreements for condominium units in the Improvements in the normal course of its operation of the Improvements.

For the purposes of this Agreement, transfer shall also include any direct or indirect transfer of control of, or a majority membership interest in, the Developer or Miners Point LLC, without the prior written approval of the Authority. The approval of the Authority pursuant to this Section 12.1 shall not be unreasonably withheld, conditioned or delayed. The Authority acknowledges and approves the contemplated structure of Developer and Miners Point LLC as follows: Aardex Real Estate Services LLC (ARES) is and will remain the managing member of Developer and Miners Point LLC; Chris Ernst and Jeff Seberg shall be the sole members of ARES and minority members of Developer and Miners Point LLC; a group of equity investors will be the remaining members of Developer and Miners Point LLC.

12.2 Information as to Interest Holders. Exhibit F contains information regarding the Developer, its members and the Developer’s consultants and advisors. Exhibit F-1 contains information regarding the Miners Point LLC, its members and Miners Point LLC’s consultants and advisors. During the period between execution of the Agreement and the issuance of a final Certificate of Completion for construction of all of the Improvements, the Developer will promptly notify the Authority of any and all changes in the ownership of interests, legal or beneficial, in the Developer and/or Miners Point LLC or of any change in the direct or indirect control of such interests and in all changes and additions to Exhibits F and F-1, which changes shall be subject to the Authority’s prior written approval, to the extent required pursuant to Section 12.1 hereof.

SECTION 13. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

13.1 Limitation Upon Encumbrance of Property. Prior to the Completion of Construction, the Developer shall not mortgage or encumber any part of the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any part of the Property, except for (a) a Mortgage obtained as part of Developer’s Financing to the extent necessary for development and construction of each Phase of the Improvements (including Hard Costs and Soft Costs), in which event the Holder of the Mortgage shall have entered into a standstill or intercreditor agreement with the Authority (a “Standstill Agreement”) which Borrower agrees will permit each of the Authority and the Holder to send any notices of Developer’s default to each other or (b) those encumbrances permitted in Section 12.1 above. Until Completion of Construction of all of the Improvements required for each Phase by this Agreement, the Developer (or any successor in interest) shall notify the Authority, subject to the non-disclosure provisions of Section 7.1, in writing in advance of any financing which will
encumber the Property and the terms and conditions thereof. Additionally, the Developer shall, upon its knowledge thereof, promptly notify the Authority of any encumbrance or lien that has been created on or attached to the Property (or any part thereof) or the Improvements (or any part thereof), whether by voluntary act of the Developer or otherwise. The Authority agrees that, to the extent it legally may do so, and in compliance with CORA, it shall keep such information confidential and shall protect the same from disclosure.

13.2 **Holder Not Obligated to Construct.** Notwithstanding any of the provisions of the Agreement, prior to Completion of Construction, the Holder of any Mortgage authorized by the Agreement shall not be obligated to construct or complete the Improvements (or any part thereof) or to guarantee such construction or completion; provided, that nothing in the Agreement shall be construed to authorize any such Holder to devote the Improvements to any other use or to construct any improvements thereon other than the Improvements.

13.3 **Copy of Notice of Default to Mortgagee.** The Authority shall deliver a copy of any notice or demand to the Developer with respect to any claimed Default by the Developer. Provided that the Holder has provided a notice address to the Authority, the Authority shall simultaneously forward a copy of each notice or demand sent to the Developer to the Holder at the such address.

13.4 **Holder’s Option to Cure Defaults.** Prior to Completion of Construction, after any Default by the Developer, the Holder shall have the right to cure or remedy such Default and to add the cost thereof to the debt and lien of its Mortgage.

**SECTION 14. CONTINGENCIES; TERMINATION**

14.1 **Termination by Developer.** The Developer shall have the right to terminate the Agreement if:

a. prior to the date specified in the Schedule of Performance, the Developer, after good faith efforts, fails to obtain Developer’s Financing for any Phase prior to the Closing on the Development Tract for such Phase; or

b. the Developer reasonably and in good faith determines, based upon the results of soils or environmental tests and within the time periods set forth in the Schedule of Performance, that the soils or environmental conditions or utilities are not satisfactory to carry out development of the Property or construction of the Improvements; or

c. unless waived by the Developer, title to the Property does not conform with the requirements of Section 4.4 at the time specified in the Schedule of Performance.

14.2 **Termination by Authority.** The Authority shall have the right to terminate the Agreement if:

a. prior to the dates for each specified in the Schedule of Performance, the Developer fails to obtain Developer’s Financing for any Phase.
14.3 **Action to Terminate.** Termination must within thirty (30) days of the dates specified in the Agreement, inclusive of the Schedule of Performance, and must be accomplished by written notification to the other Party. Failure to terminate this Agreement for any failure identified in this Section 14 constitutes a waiver of the right to terminate this Agreement for that particular failure only and shall not constitute a waiver of the right to terminate the Agreement for any other failure under such sections. No action to terminate shall occur until the notice and Grace Period provisions set forth in Section 15.3 have been fulfilled.

14.4 **Effect of Termination.** If this Agreement is terminated pursuant to Section 14, each Party shall pay its own costs and expenses related to this Agreement. In addition, the Parties agree to execute a mutual release, lease termination(s), quit claim deed and other instruments reasonably required to effectuate and give notice of such termination.

SECTION 15. DEFAULT; REMEDIES

15.1 **Default by Developer.** Default by Developer under the Agreement shall mean one or more of the following events:

a. The Developer, in violation of this Agreement, assigns or attempts to assign this Agreement, the Improvements or any part of its interest in Property, or any rights in the same; or

b. the Developer fails to commence, diligently pursue and complete construction of the Improvements as required by the Agreement and this Agreement has not been terminated under the provisions of Section 14; or

c. the Developer suffers or permits any lien, uncured default or encumbrance on the Property or the Improvements in violation of this Agreement, but a lien shall not constitute a Default if Developer deposits in escrow with the Authority sufficient funds or undertakes other measures reasonably satisfactory to the Authority to discharge the lien, including bonding over in accordance with Colorado statutes;

d. the Developer fails to observe or perform any other covenant or obligation required of it under this Agreement or to make good faith efforts to obtain Developer’s Financing or any representation or warranty made by the Developer under this Agreement is materially false when made;

e. a Holder exercises any remedy provided by loan documents, law or equity that creates a materially adverse effect on the Property or the Improvements, but such default by the Developer shall not defeat the rights of any Holder hereunder; or

f. the Developer fails to perform its obligations to a Holder resulting in an uncured event of default under a Mortgage.

If any of the foregoing Defaults is not cured within the time provided in Section 15.3, then the Authority may exercise any remedy available under Sections 15.4, 15.5 and 15.7.

15.2 **Default by the Authority.** Default by the Authority under the Agreement shall mean one or more of the following events:
a.  failure of the Authority to comply with the provisions of Section 13 relating to the rights of the Holder of a Mortgage under the circumstances set forth therein; or

b.  the Authority fails to observe or perform any other covenant or obligation required of it under this Agreement or any representation or warranty made by Authority under this Agreement is materially false when made.

If any of the foregoing defaults is not cured within the time provided in Section 15.3, then the Developer may exercise any remedy available under Section 15.4 and 15.7.

15.3 Grace Periods. Upon a Default by either Party, such Party shall, upon written notice from the other, proceed immediately to cure or remedy such Default. Any Default shall be cured within thirty (30) days after receipt of such notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time if curing cannot be reasonably accomplished within thirty (30) days.

15.4 Remedies on Default. Whenever any Default occurs and is not cured under Section 15.3 of this Agreement, the non-defaulting Party may take any one or more of the following actions:

a.  Suspend performance under this Agreement until it receives assurances from the defaulting Party, deemed adequate by the non-defaulting Party, that the defaulting Party will cure its Default and continue its performance under this Agreement within a reasonable time; or

b.  subject to the rights of a Holder, cancel and rescind the Agreement; or

c.  take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including, without limitation, specific performance or to seek any other right or remedy at law or in equity, including damages. In the case of the Authority, the Parties acknowledge that the Authority’s actual damages in the event of a default by Developer will be difficult to ascertain, and that therefore liquidated damages in the amount of $350 per day is an appropriate measure of the Authority’s damages, and that such liquidated damages represent the parties’ best estimate of such damages in the event of a default by the Developer. The parties expressly acknowledge that the foregoing liquidated damages are intended not as a penalty, but as full liquidated damages, in the event of a default by the Developer. Notwithstanding the foregoing, in no event shall Developer be permitted to seek specific performance against the Authority.

15.5 Restrictive Covenant Remedies. If subsequent to the conveyance of any Development Tract and prior to Completion of Construction of the Improvements and issuance of a Certificate of Completion related to such Development Tract, the Developer suffers or permits a Default that is not cured pursuant to Section 15.3, and the Holder fails to exercise its right to cure or remedy such Default or notifies the Authority in accordance with the Standstill Agreement that is has chosen not to exercise remedies available under a Mortgage then, in addition to any other right or remedy under the Agreement, the Authority shall have the right, subject to the terms and conditions of the Standstill Agreement, to terminate this Agreement and exercise its lien rights under the Restrictive Covenant.
15.6 Other Rights and Remedies. The Authority and Developer shall have the right to institute such actions or proceedings as either may deem desirable for effectuating the purposes of this Section 15. If a Party must commence legal action to enforce its rights and remedies under this Agreement, the prevailing Party shall be entitled to receive, in addition to any other relief, its costs and expenses, including reasonable attorneys’ fees, of such action or enforcement; provided, however, that in no case shall Developer be entitled to seek specific performance against the Authority.

15.7 Delays; Waivers. Any delay by either Party in pursuing any right or remedy under the Agreement shall not operate as a waiver of such right or remedy in any way; nor shall any waiver made by such Party be considered or treated as a waiver of any right or remedy with respect to any other Default by the other Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of the right or remedy by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

15.8 Enforced Delay in Performance for Causes Beyond Control of Party. Anything in the Agreement to the contrary notwithstanding, neither Party shall be considered in Default in the event of enforced delay in the performance of obligations under the Agreement due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal, State or local government, over which the Party has no control, discovery of Hazardous Substances on the Property, acts of the other Party, acts of third parties (including the effect of any petitions for initiative or referendum), the effect of any condition precedent to any obligation of either Party over which such Party has no control, the effect of litigation, acts of courts, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors or materialmen due to such causes, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming such delay, shall be extended for the period of the enforced delay; provided, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after such Party knows of, or should have known by the exercise of reasonable diligence of any such enforced delay, first notify the other Party thereof in writing of the cause or causes thereof, and claim the right to an extension for the period of the enforced delay.

15.9 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any such remedy shall not preclude the exercise by it, at the same or different times, of any other remedy for any other Default by any other Party.

SECTION 16. MISCELLANEOUS

16.1 Conflicts of Interest. None of the following shall have any personal interest, direct or indirect, in the Agreement: A member of the governing body of the Authority or the City; an employee of the Authority or the City who exercises responsibility concerning the urban renewal project, or an individual or firm retained by the City or the Authority who has performed consulting services in connection with the urban renewal project. None of the above persons or entities shall participate in any decision relating to the Agreement that effects his or her personal interests or the interests of any entity in which he or she is directly or indirectly interested.
16.2 **Antidiscrimination.** The Developer, for itself and its successors and assigns, agrees that in the construction of and in the use and occupancy of the Property and the Improvements, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, disability, marital status, ancestry or national origin.

16.3 **No Merger.** None of the provisions of the Agreement shall be merged by reason of any Deed transferring title to any Development Tract from the Authority to the Developer, and such Deed shall not be deemed to affect or impair the provisions of the Agreement.

16.4 **Title of Sections.** Any titles of the several parts and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

16.5 **No Third-Party Beneficiaries.** Except for the City and specific rights in favor of Mortgagees, no third-party beneficiary rights are created in favor of any person not a party to the Agreement.

16.6 **Venue and Applicable Law.** Any action arising out of the Agreement shall be brought in the Jefferson County District Court and the laws of the State of Colorado shall govern the interpretation and enforcement of the Agreement.

16.7 **Nonliability of Authority Officials, Agents and Employees.** No council member, board member, commissioner, official, employee, consultant, attorney or agent of the Authority or the City shall be personally liable to the Developer under the Agreement or in the event of any Default by the City or Authority or for any amount that may become due to the Developer.

16.8 **Authority or City Not a Partner; Developer Not Authority’s Agent.** Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, neither the Authority nor the City shall be deemed or constituted a partner or joint venture of the Developer. The Developer shall not be the agent of the Authority or the City and neither the Authority nor the City shall be responsible for any debt or liability of the Developer or any operator or manager of the Improvements.

16.9 **Integrated Contract.** This Agreement is an integrated contract and invalidation of any of its provisions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect unless the Parties otherwise agree in writing to an amendment.

16.10 **Counterparts.** The Agreement is executed in counterparts, each of which shall constitute one and the same instrument.

16.11 **Notices.** A notice, demand or other communication under the Agreement by any Party to the other shall be in writing and sufficiently given if delivered in person or if it is delivered by overnight courier service with guaranteed next-day delivery or by certified mail, return receipt requested, postage prepaid, and

a. in the case of the Developer, is addressed to or delivered to the Developer as follows:
Chris Ernst  
ARES LLC  
14143 Denver West Parkway, Suite 500  
Golden, CO 80401  

and  

Jeff Seberg  
ARES LLC  
14143 Denver West Parkway, Suite 500  
Golden, CO 80401  

with a copy to:  

Scott D. Albertson  
Holley, Albertson & Polk, P.C.  
1667 Cole Blvd., Suite 100  
Golden, CO 80401  
Telephone: 303-233-7838  

b. in the case of the Authority, is addressed to or delivered to the Authority as follows:  

The Golden Urban Renewal Authority  
Attention: Steve Glueck  
922 Washington Ave, Ste. 100  
1445 10th Street  
Golden, Colorado 80401  

with a copy to:  

Brownstein Hyatt Farber Schreck LLP  
Attention: Carolynne White  
410 17th Street  
Denver, Colorado 80202  

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this section.  

16.12 Good Faith of Parties. In performance of the Agreement or in considering any requested extension of time or in the giving of any approval, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold, delay or condition any approval required by the Agreement.  

16.13 Exhibits Merged. All Exhibits annexed to the Agreement shall be deemed to be expressly integrated herein.
16.14 Days. If the day for any performance or event provided for herein is a Saturday, Sunday or other day on which either national banks or the office of the Clerk and Recorder of Jefferson County, Colorado, is not open for the regular transaction of business, such day therefore shall be extended until the next day on which said banks or said office are open for the transaction of business.

16.15 Further Assurances. Each Party agrees to execute such documents and take such action as shall be reasonably requested by the other Party to confirm, clarify or effectuate the provisions of this Agreement. The Parties agree to cooperate with each other during the term of this Agreement by granting to each other such reciprocal easements, cross easements and rights of way for pedestrian and vehicular ingress and egress, walkways, parking and such other matters as may be reasonably required for the proper development and use of the Property in accordance with this Agreement. Prior to the Closing of Phase C-1, the Parties will use their reasonable best efforts to agree upon and place of record with the Clerk and Recorder of Jefferson County, Colorado, a memorandum of this Agreement or other mutually acceptable form of the covenants contained in this Agreement; provided, however, notwithstanding the foregoing, if the Parties fail to agree on the form and contents of such memorandum or covenants, the Authority, in its sole discretion, may elect to record this entire Agreement, including any amendments.

16.16 Certifications. Each Party agrees to execute such documents as the other Party may reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting Party may reasonably request.

16.17 Amendments. This Agreement shall not be amended except by written instrument signed and delivered by the Parties.

16.18 Representations and Warranties. No representations or warranties whatever are made by any Party except as specifically set forth in this Agreement.

16.19 Minor Changes. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The officers executing the Agreement have been authorized to make, and may have made, minor changes in the Agreement and the attached Exhibits as they have considered necessary. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of the Agreement shall constitute conclusive evidence of the approval of such changes by the respective Parties.
IN WITNESS WHEREOF, the Authority and the Developer have caused the Agreement to be duly executed as of the day first above written.

DEVELOPER

GOLDEN WEST OFFICE LLC

By: ________________________________
  (title)

AUTHORITY

GOLDEN URBAN RENEWAL AUTHORITY

By: ________________________________
  Chair
EXHIBIT A
Legal Description of Property

PARCEL 1:
LOT 2
Golden Gateway Station Minor Replat #2
City of GOLDEN, County of Jefferson, COLORADO

Lot 2 also known by Assessor Parcel ID 30-273-14-020

PARCEL 2:
LOT 4
Golden Gateway Station Minor Replat #2
City of GOLDEN, County of Jefferson, COLORADO

Lot 4 also known by Assessor Parcel ID 30-273-14-018
EXHIBIT B-1

The Development Plan

(As amended 02/25/14)

Commercial Buildings & Related Parking

The Development Plan consists of (1) the “Conceptual Master Plan” prepared by Colcon Development LLC regarding Phase 1, (2) the “Conceptual Master Plan” prepared by Colcon Development LLC regarding Phase 2, and (3) the provisions of this Exhibit B. The southern edge Lot 2 and Lot 4 contains two buildings (Phases 1 and 2) adjacent Jackson Street.

I. 13th Street Phase 1 – Parcel 4

Phase 1 is a four story mixed use project with 17 underground parking spaces. The first two floors of the project consists of 12 units, business on the first floor and residential on the second floor, which Developer will use reasonable efforts to market as live/work units. The third and fourth floors are residential. The project consists of approximately 34,000 square feet, with approximately 26,500 being livable square footage. The project also provides for landscape and streetscape improvements.

13th Street, called Prospector Place consists of commercial and residential, as described above. The developer understands that it is a goal of the Authority to promote commercial uses in the first floor of 13th Street. The first floor of 13th Street shall be devoted to commercial uses; provided, however, if after good faith efforts to do so, the Developer is unable to lease or sell such first floor space at reasonable competitive rates for commercial uses and 12 months have passed since Completion of Construction, the Developer may request from the City a Special Use Permit to allow the first floor of 13th Street to become residential. The Application for a Special Use Permit allowing residential on the first floor of 13th Street may be made by the Developer at any time after 10 months have passed since Completion of Construction, but will not be effective until 12 months have passed since Completion of Construction. Developer agrees that upon the request of the Authority, but not more than once per quarter, Developer will appear before the Authority to report Developer’s progress with respect to the foregoing efforts.

Prospector Place contains a total of approximately 34,000 gross square feet above the parking level. The first floor of Prospector Place contains approximately 7,200 square feet. The upper floors of Prospector Place will contain approximately 16 residential units (estimated 24 bedrooms, total). Prospector Place provides one space for each residential unit as currently designed. The total number of parking provided in the parking garage will be 17 parking spaces, accessed through the adjacent City-owned parking structure. The remainder of the parking required for the commercial space will be provided through cash-in-lieu for the City-owned parking spaces.

The first two floors of the building will be masonry with some infill portions of lap siding. The upper two floors will be a panelized system with similar colors to the two colored masonry portion of the building below. Careful consideration is being paid to the historical context of the project and the architectural elements draw from the historical context. The building steps so that exterior space is provided for those on the third and fourth floor. The live/work units are supplied with a
front porch to address and activate the street. The design intent is to take a current look at interpreting the surrounding area and respecting the historical context of the new building.

The Development Plan includes the planters, landscaping, and hardscaping inside of the property line. For improvements outside of the property line, refer to the site plan for the extent of pavers, street trees, seating areas and streetscape improvements.

Developer agrees that the units on the first two floors shall be constructed and condominium mapped as twelve separate units, with commercial on the first floor and residential on the second floor, or if the Special Use Permit noted above is approved and utilized, with the first floor being either residential or commercial.

The project on 13th street is anticipated to be a 14 month construction schedule. The building will be from lot line to lot line on the north, east and west sides. Because of this, the construction will require the closure of the sidewalk on the east and south sides of the property. Construction deliveries will be made in the evenings and weekends to allow for as little interference with traffic and pedestrian activities around the construction site. Along with the construction of Prospector Place, the project will also provide substantial improvement to the streetscape along 13th street and enhance the pedestrian feel of that portion of the block.

II. 12th Street Phase 2 – Parcel 2

Phase 2 - 12th Street consists of retail, office, and residential. It is the goal of the Authority to promote retail uses in the first floor of 12th Street. The first floor of 12th Street shall be devoted to retail uses; provided, however, if after good faith efforts to do so, the Developer is unable to lease or sell such first floor space at reasonable competitive rates for retail uses and 12 months have passed since Completion of Construction, the Developer may lease or sell any remaining space on such first floor for office or other commercial uses. Developer agrees that upon the request of the Authority, but not more than once per quarter, Developer will appear before the Authority to report Developer’s progress with respect to the foregoing efforts.

Phase 2 contains a total of approximately 34,000 gross square feet above the parking level. The first floor of Phase 2 contains approximately 7,750 square feet. There is approximately 7,750 square feet per floor for the first three floors with approximately 6,000 on the 4th floor. The uses for each floor are anticipated to be; retail on the first floor, office on the second floor, up to 4 residential units on the third floor and up to 2 residential units on the top floor.

Phase 2 parking which is as part of the project will include 14 structured parking spaces located below grade, accessed through the adjacent City-owned parking structure. The rest of the required parking will be supplied utilizing cash-in-lieu for the City-owned parking spaces.

The Development Plan includes the planters, landscaping, and hardscaping inside of the property line. For improvements outside of the property line, see EXHIBIT G “Improvements Outside of Property Lines”

Phase 2 is anticipated to be a 14 month construction schedule. The building will be from lot line to lot line on the south, east and west sides. Because of this, the construction will require the closure of the sidewalk on the east and north sides of the property. Construction deliveries will be made in
the evenings and weekends to allow for as little interference with traffic and pedestrian activities around the construction site. Phase 2 construction will also provide substantial improvement to the streetscape along 12\textsuperscript{th} street and enhance the pedestrian feel of that portion of the block.
EXHIBIT B-2

Phase 1 Depiction/Plans and Specifications

[See attached]
EXHIBIT B-3

Phase 2 Depiction/Plans and Specifications

[See attached]
EXHIBIT C
Schedule of Performance

<table>
<thead>
<tr>
<th>Event</th>
<th>Date or Time</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Provisions</strong></td>
<td></td>
</tr>
<tr>
<td>A1. Effective Date of the Agreement.</td>
<td>November ____ , 2014</td>
</tr>
<tr>
<td>A2. Authority delivers Survey and Commitment or Commitments to the Developer.</td>
<td>Completed</td>
</tr>
<tr>
<td>A3. Developer completes review of Title documents (Sec. 4.3)</td>
<td>Completed</td>
</tr>
<tr>
<td>A4. Developer completes all soils and environmental tests and surveys and studies on the Property.</td>
<td>Completed</td>
</tr>
<tr>
<td><strong>Improvements – 13th Street Phase 1</strong></td>
<td></td>
</tr>
<tr>
<td>1-1. Developer submits evidence to the Authority that it has applied for Developer’s Financing for Phase 1.</td>
<td>30 days after the Effective Date</td>
</tr>
<tr>
<td>1-2. Developer submits evidence of Developer’s Financing for Phase 1 to the Authority.</td>
<td>60 days after the Effective Date</td>
</tr>
<tr>
<td>1-3. Date for approval or disapproval of Developer’s Financing (Phase 1) by the Authority.</td>
<td>Within 10 days after Event 1-2</td>
</tr>
<tr>
<td>1-4. Final date for Developer to obtain final approval of Developer’s Financing and site plan from the Authority and the City and meet all other City pre-construction requirements for Phase 1.</td>
<td>8 weeks after the Effective Date</td>
</tr>
<tr>
<td>1-5. Commencement of Construction by Developer of Phase 1 Improvements.</td>
<td>Upon completion of Event 1-4 and issuance of construction permit by City, but no later than 10 weeks after the Effective Date</td>
</tr>
<tr>
<td>1-6 Site prep and foundation</td>
<td>Duration approximately 40</td>
</tr>
</tbody>
</table>
1-7 Superstructure
Duration approximately 120 days

1-8 Roofing
Duration approximately 60 days

1-9 Skin of building
Duration approximately 120 days

1-10 Site Landscaping
Duration approximately 30 days

1-11 Interior Finishes
Duration approximately 120 days

1-7. Completion of Construction by Developer of Phase 1 Improvements.
14 months after Commencement of Construction

**Improvements – 12th Street Phase 2**

2-1. Developer submits evidence to the Authority that it has applied for Developer’s Financing for Phase 2.
90 days after the Effective Date

2-2. Developer submits evidence of Developer’s Financing for Phase 2 to the Authority.
120 days after the Effective Date

2-3. Date for approval or disapproval of Developer’s Financing (Phase 2) by the Authority.
Within 10 days after Event 2-2

2-4. Final date for Developer to obtain final approval of Developer’s Financing and site plan from the Authority and the City and meet all other City pre-construction requirements for Phase 2.
150 days after effective date

2-5. Commencement of Construction by Developer of Phase 2 Improvements.
Upon completion of Event 2-4 and issuance of construction permit
by City, but no later than 164 days after the Effective Date

2-6 Site Prep and Foundation
Duration approximately 40 days

2-7 Superstructure
Duration approximately 120 days

2-8 Roofing
Duration approximately 60 days

2-10 Skin of building
Duration approximately 120 days

2-11 Site Landscaping
Duration approximately 30 days

2-12 Interior Finishes
Duration approximately 120 days

2-13. Completion of Construction by Developer of Phase 2 Improvements.
14 months after Commencement of Construction
EXHIBIT D

Special Warranty Deed

THE GOLDEN URBAN RENEWAL AUTHORITY ("Grantor"), a body corporate and politic of the State of Colorado, whose address is 922 Washington Avenue, Suite 100, 1445 10th Street, Golden, Colorado 80401, for the consideration of the sum of Ten Dollars ($10.00) in hand paid, hereby sells and conveys to GOLDEN WEST OFFICE, LLC, a Colorado limited liability company (Grantee"), whose legal address is 14143 Denver West Parkway, Ste 500, Golden, Colorado 80401, the following real property in the County of Jefferson, State of Colorado, to wit:

with all of its appurtenances, and warrants the title to the same subject to:

[insert appropriate Permitted Exceptions]

And also subject to Grantor’s right of repurchase as set forth in Section 15.5 of that certain Disposition and Development Agreement recorded at ______________ . Such right of repurchase shall terminate upon issuance by Grantor and recordation of a Certificate of Completion for each such Development Tract.

Grantor furthermore reserves to itself, for the benefit of the general public, a non-exclusive easement approximately 7 feet wide along the west end of the Property for the purpose of truck loading and unloading, depicted in Exhibit A to this Special Warranty Deed.

Signed this _____ day of ______________, 2014

Grantor:

GOLDEN URBAN RENEWAL AUTHORITY

By: ________________________________

ATTEST: Chair

______________________________
Secretary
STATE OF COLORADO  )
COUNTY OF JEFFERSON  ) ss.

The foregoing instrument was acknowledged before me this ___ day of ____________, 20__, by
__________________________, as Chair, and ____________________________, as Secretary of
the Golden Urban Renewal Authority, a body corporate and politic.

    My commission expires:

    WITNESS my hand and official seal.

______________________________

Notary Public
EXHIBIT E
Certificate of Completion of Construction

The Golden Urban Renewal Authority, a body corporate and politic of the State of Colorado (the “Authority”), of 922 Washington Avenue, Suite 100, 1445 10th Street, Golden, Colorado 80401, hereby certifies that all of the improvements (the “Improvements”) constructed on the real property described in Exhibit A, attached to and made a part hereof, have been satisfactorily completed, and all of the Improvements conform with the uses specified in the Golden Urban Renewal Plan (a.k.a. The Golden Downtown Development Plan), as amended, which was approved and adopted by the City Council of the City of Golden, Colorado.

This Certificate of Completion shall be a conclusive satisfaction of the obligation of ____________________________ (the “Developer”), to construct the Improvements on the real property described in Exhibit A, as evidenced by the special warranty deed (the “Deed”) dated __________, recorded _________________, at ___________, reception no. ______, in the office of the County Clerk and Recorder, Jefferson County, Colorado.

Signed and delivered this ___ day of ______________, 20__. 

GOLDEN URBAN RENEWAL AUTHORITY

ATTEST:                  By:____________________________________________
                       Chair

________________________________________
Secretary

STATE OF COLORADO  )
 ) ss.
COUNTY OF JEFFERSON  )

The foregoing instrument was acknowledged before me this ___ day of _____________, 20__, by ____________________________, as Chair, and ____________________________, as Secretary of the Golden Urban Renewal Authority, a body corporate and politic.

My commission expires:

WITNESS my hand and official seal.

____________________________________
Notary Public
EXHIBIT F
Developer’s Information Statement

1. Name, address, telephone and facsimile number of Developer:

Golden West Office LLC
C/O Chris Ernst CEO/President
14143 Denver West Parkway, Suite 500
Golden, CO 80401
Telephone: 303-327-4480
Facsimile: 866-449-2143

2. Federal Identification Number of Developer: [_____]

3. Name, address, title and telephone number of managers and all members of Developer and their percentage of ownership interest in Developer:

Ares LLC
14143 Denver West Parkway, Suite 500
Golden, CO 80401
Telephone: 303-327-4480
Facsimile: 866-449-2143
Currently 100% (to be amended when equity is raised)

4. Date of Organization of Developer: September 17, 2012

5. Name, address and telephone number of principal members of Developer’s team of consultants and advisors:

Attorneys:

Scott D. Albertson
Holley, Albertson & Polk, P.C.
1667 Cole Blvd., Ste. 100
Golden, CO 80401
Telephone: 303-233-7838

Architects:
Under Consideration
Construction Manager:
Colcon Development LLC
14143 Denver West Parkway, Ste 500
Golden, CO 80401
Telephone: 303-987-8000
Facsimile: 866-449-2156
EXHIBIT F-1
Miners Point LLC’s Information Statement

[Confirm/provide Information]

1. Name, address, telephone and facsimile number of Miners Point LLC:

   Golden West Office LLC
   C/O Chris Ernst CEO/President
   14143 Denver West Parkway, Suite 500
   Golden, CO 80401
   Telephone: 303-327-4480
   Facsimile: 866-449-2143

2. Federal Identification Number of Miners Point LLC: [______]

3. Name, address, title and telephone number of managers and all members of Developer and their percentage of ownership interest in Developer:

   Ares LLC
   14143 Denver West Parkway, Suite 500
   Golden, CO 80401
   Telephone: 303-327-4480
   Facsimile: 866-449-2143

   Currently 100% (to be amended when equity is raised)

4. Date of Organization of Developer: October 2, 2014

5. Name, address and telephone number of principal members of Developer’s team of consultants and advisors:

   Attorneys:

   Scott D. Albertson
   Holley, Albertson & Polk, P.C.
   1667 Cole Blvd., Ste. 100
   Golden, CO 80401
   Telephone: 303-233-7838

   Architects:

   Under Consideration
Construction Manager:
Colcon Development LLC
14143 Denver West Parkway, Ste 500
Golden, CO 80401
Telephone: 303-987-8000
Facsimile: 866-449-2156
EXHIBIT G
Improvements Outside of Building Envelope

Provided the Developer is not in Default under this Agreement, and such Default remains uncured, the below Improvements outside of the 13th Street building envelope are to be provided by the Authority substantially in accordance with the following schedule:

**Improvements Outside of Building Envelope – 13th Street Phase 1**

**Item**

Site Work to install truck unloading zone on prospector alley in the easement being reserved by the Authority for the benefit of the public adjacent to Prospector Alley in conjunction with project constraints.

Any sculptures to be placed on the corner of Jackson and 13th Street
EXHIBIT H

Twelve Month Use Covenant
DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS (this "Declaration") is made as of the ___ day of _____________, 20__ by GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado ("Declarant").

Recitals

A. Declarant owns the real property located in the City of Golden, State of Colorado (the "City"), more particularly described on Exhibit A attached hereto (the "Property"). The Property is located within the area of the City of Golden, Colorado (the “City”) covered by the Golden Urban Renewal Plan (a.k.a. Golden Downtown Redevelopment Plan), approved by the City Council of the City on December 31, 1989, by Ordinance No. 1078, as such Plan may be amended from time to time (the “Plan”), pursuant to which Declarant is charged with remedying blighted conditions within certain designated areas of the City.

B. In furtherance of the Plan, and in connection with the redevelopment of the Property in accordance with Colorado Urban Renewal Law, article 25 of title 31, C.R.S., as amended (the “Act”) and the Plan, Declarant has entered into a Disposition and Development Agreement with Golden West Office, LLC (“Developer”), dated as of November __, 2014 (the “Development Agreement”) with respect to the conveyance and redevelopment of the Property.

C. In accordance with the Development Agreement and in connection with the redevelopment of the Property pursuant to the Development Agreement or otherwise, Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth in this Declaration.

Declaration

In consideration of the foregoing, Declarant hereby declares as follows:
ARTICLE I
DECLARATION

1.01 Declaration. Declarant hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the limitations, covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration, all of which are for the purposes of enhancing, maintaining and protecting the value and attractiveness of the Property and remediying blighted conditions within certain areas of the City.

1.02 Covenants Running with the Land. The covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, and shall bind the owner(s) of, and all other parties having any right, title or interest in, the Property or any portions thereof, and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II
DEFINITIONS

2.01 Basic Definitions. As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

(a) “Act” has the meaning given to that term in Recital B above.

(b) "Applicable Law" means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

(c) "Approval Request" has the meaning given to that term in Section 3.03(b) below.

(d) "City" has the meaning given to that term in Recital A above.

(e) “Condominium Documents” has the meaning given to that term in Section 3.02 below.

(f) "Declarant" has the meaning given to that term in the introductory paragraph above.

(g) "Declaration" has the meaning given to that term in the introductory paragraph above.

(h) “Developer” has the meaning given to that term in Recital B above.
(i) "Development Agreement" has the meaning given to that term in Recital B above.

(j) "Development Plan" means the plan for development of the Property set forth on Exhibit B attached hereto.

(k) "Failure Notice" has the meaning given to that term in Section 3.01(b) below.

(l) "Grading" means any excavation, earth movement, filling, rough grading, stockpiling, paving, drainage modification or other alteration of the natural ground surface or its elevation.

(m) "Improvement" means any building, structure or other permanently attached or imbedded improvement, including walls, driveways, sidewalks, plazas, antennae, satellite dishes, heating and cooling equipment and other utility systems.

(n) "Landscaping" means irrigation and drainage, vegetation installation and removal, art, furniture and other landscaping activities.

(o) "Owner" means the record holder of legal fee simple title to the Property, a portion thereof or an interest therein, including, but not limited to, Developer and any successors and assigns of Developer as the owner of the Property. If there is more than one record holder of legal title to the Property, each record holder is an Owner.

(p) "Person" means any natural person, corporation (including any non-profit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(q) "Plan" has the meaning given to that term in Recital A above.

(r) "Plans and Specifications" means the plans and specifications for any and all proposed development, construction, installation, alteration or demolition of Improvements, Landscaping, Signs or Grading on the Property consistent with the Development Plan.

(s) "Property" has the meaning given to that term in Recital A above.

2.02 Usage. Unless the context of this Declaration clearly requires otherwise:

(a) terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;

(b) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Declaration;

(c) references to one gender include all genders;
(d) "including" is not limited;

(e) "or" has the inclusive meaning represented by the phrase "and/or";

(f) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

(g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified;

(h) reference to any breach or default shall not include any immaterial breach or default, taking into account all facts and circumstances; and

(i) reference to any agreement (including this Declaration), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

ARTICLE III
DESIGN APPROVAL

3.01 Design Approval and Control.

(a) No Person, with respect to the Property, may, without the prior written consent of Declarant:

(i) perform any Grading;

(ii) construct any building, structure or other permanently attached or imbedded improvement, including walls, driveways, sidewalks, plazas, antennae, satellite dishes, heating and cooling equipment and other utility systems ("Improvements");

(iii) subject to Section 3.01(c) below, make any physical or cosmetic alteration or modification to existing Improvements;

(iv) install or alter on any Improvement any exterior sign or any interior sign that is visible from outside such Improvement;

(v) install or alter any Landscaping; or

(vi) change the exterior appearance of Improvement located thereon,

in each instance, in any manner that is inconsistent with the plans and specifications set forth in the Development Agreement.

(b) Prior to taking any action described in Section 3.01(a) above, an Owner shall submit to Declarant all Plans and Specifications for the Declarant’s review and approval simultaneously with any submittal to the City with respect thereto. The Plans and Specifications
shall describe the proposed construction, alteration, installation or demolition of Improvements, Landscaping, signs or Grading in reasonable detail, and shall be prepared in accordance with the Development Plan. Declarant, through its Executive Director, shall approve, approve with conditions or deny such submittal within 30 days after receiving such submittal; provided, that if, in the opinion of the Executive Director, such submittal pertains to non-material changes to previously approved Plans and Specifications, Declarant shall approve, approve with conditions or deny such submittal within five (5) business days of such submittal. All such approvals or denials shall be binding upon all Persons. Notwithstanding anything to the contrary set forth herein, Declarant’s approval of any Plans and Specifications may be withheld if an Owner submitting the same is not in compliance with the provisions of the Development Agreement applicable to the Property or any other property described therein.

(c) Notwithstanding anything to the contrary contained herein, Improvements, Signs, alterations, modifications, installations, furniture and fixtures that:

(i) are completely within an Improvement; and

(ii) do not alter the exterior appearance of such Improvement and are not visible from the outside of the Improvement, and

(iii) comply with the Development Plan,

may be undertaken without Declarant consent, but are subject to all other covenants, conditions and restrictions contained in this Declaration.

(d) Each Owner shall comply with the Development Plan.

(e) Declarant or its designated representative may monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved Plans and Specifications and construction procedures. Declarant or any of its designated representatives may enter upon the Property at any reasonable time or times to observe the progress, work status or completion of any project, and Declarant hereby grants, creates, declares and reserves to itself and its designated representatives an easement therefor. In addition to the remedies described in Article VI below, Declarant may withdraw approval of any project and require all activity of such project to be stopped if deviations from the approved Plans and Specifications or approved construction practices are not corrected within seven (7) days after written notification to the Owner specifying such deviation or, if such deviations are not reasonably subject to correction within such period, such longer period of time as may be reasonably necessary provided that the Owner has commenced and is diligently pursuing correction of the same.

(f) Notwithstanding any provision to the contrary contained in this Declaration, Declarant shall be exempt from the limitations and prohibitions contained in this Declaration.

(g) Declarant may, in its sole and absolute discretion, grant to any Owner an exception from compliance with any or all of the provisions of this Declaration.
3.02 Condominium Documents. Prior to recording any condominium declaration or condominium map with respect to the Property, an Owner shall submit to Declarant drafts of the condominium declaration, condominium map and the articles and bylaws of the owners’ association therefor (the “Condominium Documents”), consistent in all respects with the Development Plan, for the Declarant’s review and approval. Declarant shall strive to approve, approve with conditions or deny such submittal within 30 days after receiving such submittal, failing which, the Owner may provide a notice of such failure (the “Failure Notice”) to Declarant. Declarant’s failure to approve, approve with conditions or deny such submittal within 30 days after its receipt of a Failure Notice shall be deemed an approval of such submittal. All such approvals or denials shall be binding upon all Persons. Notwithstanding anything to the contrary set forth herein, Declarant’s approval of any Condominium Documents may be withheld if an Owner submitting the same is not in compliance with the provisions of the Development Agreement applicable to the Property or any other property described therein.

3.03 Lapse of Approval. Any approval issued by Declarant shall lapse and become void one year after such approval is granted unless extended by Declarant in writing and unless the terms and conditions of any consents, approvals or permits issued by Declarant specifically provide otherwise. In addition, an approval issued by Declarant will lapse and become void if any building permit or approval issued by the City or by a governmental or quasi-governmental entity for the same project lapses or is revoked or suspended.

3.04 Liability. Neither Declarant nor any of its officers, members, directors, employees or agents shall be responsible or liable for any defects, errors or omissions in any Plans or Specifications or Condominium Documents submitted, revised or approved under this Article III, nor for any defects, errors or omissions in construction pursuant to the Plans and Specifications. A consent or approval issued by Declarant means only that Declarant believes that the construction, alteration, installation or other work for which the consent or approval was requested is consistent with the Development Plan. No such consent or approval shall be interpreted to mean that the construction, alteration, installation, demolition or other work covered thereby, or any provision of the Condominium Documents, (a) complies with Applicable Law or (b) is free from defects, errors or omissions. No consent, approval or permit issued by Declarant shall relieve Owners or other Persons of their obligations to comply with Applicable Law.

ARTICLE IV
DEVELOPMENT AND USE RESTRICTIONS

4.01 Completion of Work.

(a) No Owner shall unduly delay or discontinue the construction, alteration, installation or demolition of any Improvement or Landscaping once it is commenced.

(b) No Owner shall fail to substantially complete any Improvement within the timeframe set forth in the Development Agreement, unless specifically granted additional time by Declarant.

(c) Upon the substantial completion of any Improvement or Landscaping, as applicable, the Owner shall deliver to Declarant a written certificate from a duly licensed architect...
or engineer responsible for the construction, alteration, installation or demolition, in a form reasonably satisfactory to Declarant, certifying that the Improvement or Landscaping, as applicable, has been substantially completed in accordance with the approved Plans and Specifications.

4.02 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the conduct by Declarant or its employees, agents or contractors of any activity, including the erection or maintenance of temporary structures, Improvements, Landscaping, signs, or Grading necessary or convenient to the use, operation, development, construction, marketing or sale of the Property.

ARTICLE V
TERM, AMENDMENTS AND TURNOVER DATE

5.01 Term. Except as provided in Section 5.02 below, the covenants, conditions, restrictions, reservations, easements, charges and servitudes set forth in this Declaration shall run with and bind the Property and every part thereof, until the earlier to occur of (i) Declarant’s issuance of a certificate of completion for the Improvements on the Property as described in, and in accordance with, the Development Agreement or (ii) 10 years from the date this Declaration is recorded, unless Declarant terminates this Declaration pursuant to an instrument recorded prior thereto.

5.02 Amendment. This Declaration may be amended at any time or terminated at any time by Declarant. Such amendment or revocation shall be evidenced in writing by an instrument making appropriate reference hereto and shall be recorded in the official records of the office of the Clerk and Recorder for Jefferson County, Colorado.

ARTICLE VI
ENFORCEMENT AND FEES

6.01 Enforcement of Restrictions.

(a) If an Owner violates any term or condition set forth in this Declaration or in the Development Agreement, and fails to cure or remedy such violation within thirty (30) days after written notice thereof from Declarant or, if such deviations are not reasonably subject to cure or remedy within such period, such longer period of time as may be reasonably necessary provided that the Owner has commenced and is diligently pursuing cure or remedy of the same, Declarant shall have the following rights and remedies:

(i) Declarant may, by written notice to the Owner, revoke any approval previously granted to the Owner by Declarant, in which event the Owner shall, upon receipt of such notice, immediately cease any construction, alteration, installation or demolition covered by the approval so revoked.

(ii) Declarant may, but has no obligation to, enter upon the Property and cure such violation at the Owner's sole cost and expense, and hereby grants, creates, declares and reserves to itself and its representatives an easement therefor. If Declarant cures any such...
violation, the Owner shall pay to Declarant the amount of all costs and expenses incurred in connection therewith within 30 days after the Owner receives demand therefore from Declarant.

(iii) Declarant may sue the Owner to restrain and enjoin such violation of this Declaration.

(iv) Declarant shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

6.02 Expenses; Lien. Any fines and all costs and expenses of any nature whatsoever (including, but not limited to, legal fees and salaries of personnel) incurred in connection with any Owner’s violation of this Declaration and the exercise by Declarant of any of the foregoing remedies, including, without limitation, the amount of any funds expended by the City and Declarant in discharging or removing any liens or encumbrances levied against the Property due to acts, obligations or defaults of any Owner or its successors, transferees or contractors, shall be charges and continuing liens upon the Property. If the Owner fails to pay all amounts owed within such 30 days after demand therefor by Declarant, Declarant may file a notice of lien in the Official Records of Jefferson County, Colorado in which event the foregoing lien shall be perfected, and may enforce such lien by filing an action for judicial foreclosure. If the default is cured before completing a judicial foreclosure, including payment of all costs and expenses incurred by Declarant, Declarant shall record a notice of satisfaction and release of lien.

ARTICLE VII
MISCELLANEOUS

7.01 Interpretation of the Declaration. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant’s construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.

7.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

7.03 Reference to Declaration and Deeds. Deeds to and instruments affecting the Property or any portion thereof may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth herein shall be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

7.04 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on
the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

7.05 Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

7.06 Exhibits. All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

7.07 Governing Law. This Declaration shall be governed by and construed in accordance with Colorado law.

7.08 Attorneys' Fees. In the event of any dispute under or with respect to this Declaration, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party, whether incurred before or at trial, on appeal, in bankruptcy or in post-judgment collection.

7.09 Notices. All notices to be delivered to Owners shall be delivered to the address for such Owner in the real property tax records of the City, unless an Owner notifies Declarant of an alternate address. All notices, including submittals of Plans and Specifications and Condominium Documents, and demands intended to be served upon Declarant shall be sent to the following address or such other address as Declarant may designate from time to time by notice to the Owners:

The Golden Urban Renewal Authority
Attention: Steve Glueck
922 Washington Ave, Ste. 100
Golden, Colorado 80401

with a copy to:

Brownstein Hyatt Farber Schreck LLP
Attention: Carolynne White
410 17th Street
Denver, Colorado 80202

7.10 Waivers. No waivers by Declarant of any right of Declarant shall constitute a waiver by Declarant of any other right of Declarant.

7.11 Rule Against Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of George W. Bush, the current President of the United

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States and William Clinton, the former; (1) Queen Elizabeth II, the queen of the United Kingdom of Great Britain and Northern Ireland; (2) John D. Rockefeller III, David Rockefeller, and Laurance S. Rockefeller, sons of John D. Rockefeller, Jr., and Abby Rockefeller, daughter of John D. Rockefeller, Jr.; and (3) former U.S. Presidents George H. W. Bush and William J. Clinton, and U.S. President Barack H. Obama.

[Remainder of page intentionally blank]
Declarant has caused its name to be signed by the signature of a duly authorized official as of the day and year first written above.

DECLARANT:

GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By: ________________________________
Name: ________________________________
Title: ________________________________

STATE OF COLORADO   )
COUNTY OF ____________  ) ss.

On this ____ day of ________________, 200__, before me, personally appeared ____________________, who acknowledged himself to be the _______________ of GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado, and that he/she, as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, on behalf of such body corporate and politic of the State of Colorado.

Witness my hand and official seal.

[SEAL]

______________________________
Notary Public

My commission expires: ____________________
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY
EXHIBIT B

DEVELOPMENT PLAN FOR THE PROPERTY
EXHIBIT H-1

Restrictive Covenant
DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS (this "Declaration") is made as of the ____ day of ____________, 20__ by GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado ("Declarant").

Recitals

A. Declarant owns the real property located in the City of Golden, State of Colorado (the "City"), more particularly described on Exhibit A attached hereto (the "Property"). The Property is located within the area of the City of Golden, Colorado (the "City") covered by the Golden Urban Renewal Plan (a.k.a. Golden Downtown Redevelopment Plan), approved by the City Council of the City on December 31, 1989, by Ordinance No. 1078, as such Plan may be amended from time to time (the "Plan"), pursuant to which Declarant is charged with remediying blighted conditions within certain designated areas of the City.

B. In furtherance of the Plan, and in connection with the redevelopment of the Property in accordance with Colorado Urban Renewal Law, article 25 of title 31, C.R.S., as amended (the "Act") and the Plan, Declarant has entered into a Disposition and Development Agreement with Golden West Office, LLC ("Developer"), dated as of November __, 2014 (the "Development Agreement") with respect to the conveyance and redevelopment of the Property.

C. In accordance with the Development Agreement and in connection with the redevelopment of the Property pursuant to the Development Agreement or otherwise, Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth in this Declaration.

Declaration

In consideration of the foregoing, Declarant hereby declares as follows:
ARTICLE VIII
DECLARATION

8.01 Declaration. Declarant hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the limitations, covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration, all of which are for the purposes of enhancing, maintaining and protecting the value and attractiveness of the Property and remedying blighted conditions within certain areas of the City.

8.02 Covenants Running with the Land. The covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, and shall bind the owner(s) of, and all other parties having any right, title or interest in, the Property or any portions thereof, and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE IX
DEFINITIONS

9.01 Basic Definitions. As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

(a) "Act" has the meaning given to that term in Recital B above.

(b) "Applicable Law" means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

(c) "City" has the meaning given to that term in Recital A above.

(d) "Declarant" has the meaning given to that term in the introductory paragraph above.

(e) "Declaration" has the meaning given to that term in the introductory paragraph above.

(f) "Developer" has the meaning given to that term in Recital B above.

(g) "Development Agreement" has the meaning given to that term in Recital B above.

(h) "Improvement" means any building, structure or other permanently attached or imbedded improvement, including walls, driveways, sidewalks, plazas, antennae, satellite dishes, heating and cooling equipment and other utility systems.
(i) "Owner" means the record holder of legal fee simple title to the Property, a portion thereof or an interest therein, including, but not limited to, Developer and any successors and assigns of Developer as the owner of the Property. If there is more than one record holder of legal title to the Property, each record holder is an Owner.

(j) "Person" means any natural person, corporation (including any non-profit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(k) “Plan” has the meaning given to that term in Recital A above.

(l) "Property" has the meaning given to that term in Recital A above.

9.02 Usage. Unless the context of this Declaration clearly requires otherwise:

(a) terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;

(b) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Declaration;

(c) references to one gender include all genders;

(d) "including" is not limited;

(e) "or" has the inclusive meaning represented by the phrase "and/or";

(f) the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

(g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified;

(h) reference to any breach or default shall not include any immaterial breach or default, taking into account all facts and circumstances; and

(i) reference to any agreement (including this Declaration), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

ARTICLE X
USE RESTRICTIONS

10.01 Use Restriction. Until the expiration of this Declaration, the first/ground floor of any Improvements constructed on the Property, including any condominium units located therein, shall be marketed, sold, leased, rented, transferred, used and occupied by any Owner or other
Person, only for [commercial – Phase 1][retail/restaurant – Phase 2] purposes, and no portion thereof shall be marketed, sold, leased, rented transferred, used or occupied by any Owner or other Person for any residential purposes.

10.02 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the conduct by Declarant or its employees, agents or contractors of any activity, necessary or convenient to the use, operation, development, construction, marketing or sale of the Property.

ARTICLE XI
TERM, AMENDMENTS AND TURNOVER DATE

11.01 Term. Except as provided in Section 5.02 below, the covenants, conditions, restrictions, reservations, easements, charges and servitudes set forth in this Declaration shall run with and bind the Property and every part thereof, until the earlier to occur of (i) twelve (12) months after Declarant’s issuance of a certificate of completion for the Improvements on the Property as described in, and in accordance with, the Development Agreement or (ii) 10 years from the date this Declaration is recorded, unless Declarant terminates this Declaration pursuant to an instrument recorded prior thereto.

11.02 Amendment. This Declaration may be amended at any time or terminated at any time by Declarant. Such amendment or revocation shall be evidenced in writing by an instrument making appropriate reference hereto and shall be recorded in the official records of the office of the Clerk and Recorder for Jefferson County, Colorado.

ARTICLE XII
ENFORCEMENT AND FEES

12.01 Enforcement of Restrictions.

(a) If an Owner violates any term or condition set forth in this Declaration or in the Development Agreement, and fails to cure or remedy such violation within thirty (30) days after written notice thereof from Declarant or, if such deviations are not reasonably subject to cure or remedy within such period, such longer period of time as may be reasonably necessary provided that the Owner has commenced and is diligently pursuing cure or remedy of the same, Declarant shall have the following rights and remedies:

(i) Declarant may, but has no obligation to, enter upon the Property and cure such violation at the Owner's sole cost and expense, and hereby grants, creates, declares and reserves to itself and its representatives an easement therefor. If Declarant cures any such violation, the Owner shall pay to Declarant the amount of all costs and expenses incurred in connection therewith within 30 days after the Owner receives demand therefore from Declarant.

(ii) Declarant may sue the Owner to restrain and enjoin such violation of this Declaration.

(iii) Declarant shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.
12.02  **Expenses; Lien.** Any fines and all costs and expenses of any nature whatsoever (including, but not limited to, legal fees and salaries of personnel) incurred in connection with any Owner’s violation of this Declaration and the exercise by Declarant of any of the foregoing remedies, including, without limitation, the amount of any funds expended by the City and Declarant in discharging or removing any liens or encumbrances levied against the Property due to acts, obligations or defaults of any Owner or its successors, transferees or contractors, shall be charges and continuing liens upon the Property. If the Owner fails to pay all amounts owed within such 30 days after demand therefor by Declarant, Declarant may file a notice of lien in the Official Records of Jefferson County, Colorado in which event the foregoing lien shall be perfected, and may enforce such lien by filing an action for judicial foreclosure. If the default is cured before completing a judicial foreclosure, including payment of all costs and expenses incurred by Declarant, Declarant shall record a notice of satisfaction and release of lien.

**ARTICLE XIII**

**MISCELLANEOUS**

13.01  **Interpretation of the Declaration.** Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant’s construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.

13.02  **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

13.03  **Reference to Declaration and Deeds.** Deeds to and instruments affecting the Property or any portion thereof may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth herein shall be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

13.04  **Successors and Assigns of Declarant.** Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

13.05  **Captions and Titles.** All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

13.06  **Exhibits.** All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.
13.07  **Governing Law.** This Declaration shall be governed by and construed in accordance with Colorado law.

13.08  **Attorneys' Fees.** In the event of any dispute under or with respect to this Declaration, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party, whether incurred before or at trial, on appeal, in bankruptcy or in post-judgment collection.

13.09  **Notices.** All notices to be delivered to Owners shall be delivered to the address for such Owner in the real property tax records of the City, unless an Owner notifies Declarant of an alternate address. All notices, including submittals of Plans and Specifications and Condominium Documents, and demands intended to be served upon Declarant shall be sent to the following address or such other address as Declarant may designate from time to time by notice to the Owners:

The Golden Urban Renewal Authority  
Attention: Steve Glueck  
922 Washington Ave, Ste. 100  
Golden, Colorado 80401

with a copy to:

Brownstein Hyatt Farber Schreck LLP  
Attention: Carolynne White  
410 17th Street  
Denver, Colorado 80202

13.10  **Waivers.** No waivers by Declarant of any right of Declarant shall constitute a waiver by Declarant of any other right of Declarant.

13.11  **Rule Against Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of George W. Bush, the current President of the United States and William Clinton, the former; (1) Queen Elizabeth II, the queen of the United Kingdom of Great Britain and Northern Ireland; (2) John D. Rockefeller III, David Rockefeller, and Laurance S. Rockefeller, sons of John D. Rockefeller, Jr., and Abby Rockefeller, daughter of John D. Rockefeller, Jr.; and (3) former U.S. Presidents George H. W. Bush and William J. Clinton, and U.S. President Barack H. Obama.

[Remainder of page intentionally blank]
Declarant has caused its name to be signed by the signature of a duly authorized official as of the day and year first written above.

DECLARANT:

GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By: ____________________________
Name: ____________________________
Title: ____________________________

STATE OF COLORADO )
COUNTY OF ____________) ss.

On this ___ day of _____________, 200__, before me, personally appeared __________________, who acknowledged himself to be the ____________ of GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado, and that he/she, as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, on behalf of such body corporate and politic of the State of Colorado.

Witness my hand and official seal.

[SEAL]

_______________________________
Notary Public

My commission expires: ____________________________
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY
EXHIBIT I

Authority Parking Structure Easements
CROSS EASEMENT AND COMMON IMPROVEMENT MAINTENANCE AGREEMENT

THIS CROSS EASEMENT AND COMMON IMPROVEMENT MAINTENANCE AGREEMENT (the “Agreement”) is made and entered into as of the _____ day of __________, 2014, by and between THE GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (“GURA”), GOLDEN WEST OFFICE LLC, a Colorado limited liability company (“GWO”) and MINERS POINT LLC, a Colorado limited liability company (“MP”).

RECITALS

II. GURA is the owner of improved property commonly known and referred to as the Golden GURA Garage, located at ________ Jackson Street, Golden, Colorado, legally described as: _________ (the “GURA Garage”).

III. GURA is also the owner of Lot 2, Golden Gateway Station Minor Replat No. 2, City of Golden, County of Jefferson, Colorado, commonly known and referred to as 700 13th Street, Golden, Colorado (“Lot 2”) and Lot 4, Golden Gateway Station Minor Replat No. 2, City of Golden, County of Jefferson, Colorado, also and more commonly referred to as 701 12th Street, Golden, Colorado (“Lot 4”).

IV. GURA and GWO have entered into a Disposition and Development Agreement dated as of ______________, 2014 (the “Development Agreement”), under which it is contemplated that Lot 2 will be sold and conveyed to GWO for development of a mixed use commercial and residential project and under which it is contemplated that Lot 4 will be sold and conveyed to MP for development of a mixed use commercial and residential development.

V. The GURA Garage is situate on Jackson Street midway between 12th Street and 13th Street, Lot 2 is situate south of and adjacent to the GURA Garage, and Lot 4 is situate of north and adjacent to the GURA Garage, all is depicted on the Below Grade Plan and the Above Grade Plan attached hereto and incorporated herein as Exhibit A.

VI. The development of both Lots 2 and 4 will include construction of below grade parking which will be accessed from Jackson Street through the GURA Garage to the respective below grade parking garages on Lots 2 and 4 (the “Lot 2 Garage” and the “Lot 4 Garage”).

VII. The development of Lots 2 and 4 also requires the location of an electric transformer and electric utility easements on and through the GURA Garage.

VIII. The GURA Garage, the Lot 2 Garage, and the Lot 4 Garage will share a dry fire suppressant system and fire alarm system and all three parties will require access to and an easement for that portion of the fire suppressant and fire alarm system located within each Garage and the parties
will share all costs associated with the inspection, maintenance, and repair of the fire suppressant and fire alarm systems.

IX. The parties desire to enter into this Agreement for purposes of memorializing the cross easements and the shared maintenance obligations summarized in the foregoing Recitals.

NOW, THEREFORE, for and in consideration of the above Recitals, which are a material part hereof and not mere recitals, and the mutual promises and covenants hereinafter set forth, the parties agree as follows:

1. **Purpose of Agreement.** The purpose of this agreement is to identify the nature and scope of the various easements and shared maintenance between the parties in the GURA Garage, Lot 2 Garage, and Lot 4 Garage. It is recognized and acknowledged between the parties that the actual easement documents and shared maintenance documents to be recorded in the Jefferson County records will not be prepared and executed, nor shall the easements and maintenance obligations be effective as to the respective parties, until Lot 2 is conveyed from GURA to GWO, and Lot 4 is conveyed from GURA to MP. In connection with the closing of the sale and conveyance of Lot 2 from GURA to GWO, GURA and GWO will enter into easements and shared maintenance agreements as described herein and those easements and agreements will be recorded in the Jefferson County records and run with the land. At such time as the sale and conveyance of Lot 4 from GURA to MP closes, GURA, GWO and MP will enter into and execute additional easements and shared maintenance agreements, as described herein and such documents will be recorded in the Jefferson County records and run with the land.

2. **Vehicular Access Easements.**

   2. In conjunction with the sale and conveyance of Lot 2 from GURA to GWO, GURA will execute and deliver to GWO a recordable document granting to GWO a non-exclusive vehicular access easement for owners and occupants of the mixed use condominium project to be constructed on Lot 2, from Jackson Street through the driving aisles in the GURA Garage to the common boundary between the GURA Garage and the Lot 2 Garage, as depicted by the bold arrows on page 2 of Exhibit A. GWO will construct an entry barrier or garage door into the Lot 2 Garage within the boundaries of Lot 2 to assure that only individuals entitled to entry into the Lot 2 parking garage and possessing a garage door opener are able to enter the same.

   3. In conjunction with the sale and conveyance of Lot 4 from GURA to MP, GURA will execute and deliver to MP a recordable document granting to MP a non-exclusive vehicular access easement for owners and occupants of the mixed use condominium project to be constructed on Lot 4, from Jackson Street through the driving aisles in the GURA Garage to the common boundary between the GURA Garage and the Lot 4 Garage, as depicted by the bold arrows in Exhibit A. MP will construct an entry barrier or garage door into the Lot 4 garage within the boundaries of Lot 4 to assure that only individuals entitled to entry into the Lot 4 parking garage and possessing a garage door opener are able to enter the same.
4. The vehicular access easements to be granted pursuant to this paragraph shall provide for and be subject to the following:

SECTION 17. GURA may alter the location of the drive aisles in the GURA Garage to accommodate its use of the GURA Garage, provided that such alteration allows for reasonable access to the Lot 2 Garage, and the Lot 4 Garage. In the event of such alteration of the location of the drive aisles, the location of the access easement shall be automatically amended to correspond to the new location of the drive aisle.

SECTION 18. The size and weight of the vehicles that may use the access easement may be restricted by GURA as reasonable necessary to protect the structure of the GURA Garage.

SECTION 19. The use of the access easement shall not unreasonable interfere with the flow of vehicles in the GURA Garage.

SECTION 20. If at any time, the Lot 2 Garage or the Lot 4 Garage are no longer used for parking purposes by the owners and occupants of owners and occupants of the mixed use condominium projects to be constructed on Lot 2 and Lot 4, respectively, the vehicular access easements set forth in the applicable easement shall terminate and be of no further force and effect.

3. Utility Easements. In connection with the sale and conveyance of Lots 2 and 4 respectively to GWO and MP respectively, GURA will grant a utility easement to GWO and MP respectively to install and maintain an electric transformer for purposes of providing electric service to Lot 2 and Lot 4, at the location depicted on page 2 of Exhibit A, the Above Grade Plan. In addition a non-exclusive electric utility easement shall be granted from GURA to GWO for the benefit of Lot 2 and to MP for the benefit of Lot 4 from the transformer location to Lot 2 and Lot 4 respectively as depicted on page 1 of Exhibit A, the Below Grade Plan. The purpose of the electric utility easement is to allow for the installation of electrical conduits and wire enclosures attached to the ceiling of the below grade portion of the GURA Garage, extending from the transformer to the boundaries of Lot 2 and Lot 4, all as depicted on page 1 of Exhibit A. The electric utility easement shall be 2 feet in width and shall allow for access to the easement area through the GURA Garage in order to perform necessary maintenance and repair to the electrical service conduits. All such electrical facilities in the easement shall be located in a manner so as to not interfere with the use of the GURA Garage for parking purposes. GWO and MP shall be required to maintain at their expense all electrical facilities in their respective easements in a good and safe condition.

4. Fire Suppression and Alarm Systems Easements. In connection with the sale and conveyance of Lots 2 and 4 to GWO and MP respectively, all of the parties shall enter into cross easement agreements for purposes of installation, inspection, maintenance, and repair of the common fire suppression system and fire alarm system installed or to be installed in the GURA Garage, the Lot 2 Garage, and the Lot 4 Garage. The GURA Garage currently has a dry fire suppression system and fire alarm system installed and in place. In connection with the construction of the Lot 2 Garage and the Lot 4 Garage, GWO and MP respectively will install, at their expense, dry fire suppression and fire alarm systems meeting the requirements of the City of Golden Fire Code, which are connected to the existing GURA Garage fire suppression and fire alarm systems, thus establishing common fire suppression and fire alarm systems for the entirety
of the inter-connecting garage structures. Each party shall have an easement in and through each of the respective portions of the inter-connecting garage structures for purposes of inspection, maintenance, and repair of the common fire suppression and alarm systems.

5. **Temporary Construction Easement.** In connection with the sale and conveyance of Lots 2 and 4 respectively to GWO and MP respectively, GURA shall grant each of said parties a temporary construction easement for purposes of carrying out the intent of this Agreement. The temporary construction easement to be granted shall include the following rights and obligations:

   I. The right to construct and install an entry way through the exterior wall of the GURA Garage in order to provide access to the Lot 2 Garage and the Lot 4 Garage, as depicted in Exhibit A (it being recognized that the construction of that entry way will include the demolition of a portion of the exterior wall of the GURA Garage). Prior to any construction or demolition impacting the GURA Garage structure, detailed plans shall be submitted to GURA by GWO or MP, as the case may be, for GURA’s approval. Such plans shall include a certificate by a licensed engineer indicating that the construction and demolition will not impact the structural integrity of the GURA Garage. Such construction and installation must be done (i) in compliance with the building code adopted by the City of Golden, and in compliance with any conditions and interpretations imposed by the City’s Building Official or designee and (ii) in a manner that does not unreasonably interfere with the public’s use of the GURA Garage.

   II. The right to construct and install the electric transformer described in paragraph 3 above;

   III. The right to construct and install the electrical service and conduit lines, as described in paragraph 3 above;

   IV. The right to connect the fire suppression systems in the Lot 2 garage and the Lot 4 garage to the fire suppression system in the GURA Garage, as described in paragraph 4 above.

The temporary construction easements shall have a term which commences with the initial issuance of a building permit for the construction of improvements on Lot 2 and Lot 4 respectively and will expire with respect to each of said Lots upon the earlier of either (i) the revocation, termination or withdrawal of such building permit, or (ii) the issuance of a certificate of occupancy allowing for occupancy of the improvements on each of the Lots.

6. **Common Maintenance – Fire Suppression and Fire Alarm Systems.** At the closing of the sale and conveyance of Lot 2 to GWO, GURA and GWO shall enter into a common maintenance agreement for the fire suppression and fire alarm systems in the GURA Garage and the Lot 2 Garage. At the closing of the sale and conveyance of Lot 4 from GURA to MP, the common maintenance agreement for the fire suppression and fire alarm systems will be amended to include MP as a party and the Lot 4 Garage as a property included in the agreement. The common maintenance agreement for the fire suppression and fire alarm systems shall provide that each of the owners of the GURA Garage, the Lot 2 Garage, and the Lot 4 Garage will contribute to the cost
of inspection, maintenance, and repair of the fire suppression and fire alarm systems on a prorata basis based upon a formula in which the square footage of each of the 3 parking garages is the numerator and the total square footage of the 3 parking garages is the denominator. GURA or its designees shall be responsible for coordinating the inspection, maintenance, and repair of the fire suppression and fire alarm systems under the terms of the common maintenance agreement and shall submit itemized billing statements to GWO and MP for their respective share of the costs of inspection, maintenance, and repair as such costs are incurred. GWO and MP shall pay their prorata share of the inspection, maintenance, and repair costs within 30 days of receipt of a billing statement. In the event of a failure to pay their prorata share of costs in a timely fashion, interest shall accrue on the unpaid amounts at 12% per annum and the non-paying party shall be entitled to recover attorneys’ fees incurred in collection of the obligation. In addition to any other remedies that may be available, GURA may (i) assert, record and enforce an assessment lien on the property owned by the non-paying party, and/or (ii) terminate the easement rights granted pursuant to this Agreement, which the parties acknowledge may result in zoning and/or fire code violations that could impair the occupancy rights of the parties.

7. **Assignment and Assumption by Property Owners Associations.** It is understood and agreed that all rights and obligations of GWO under this Agreement may be assigned to and assumed by the property owners association to be created by GWO to perform the management and maintenance responsibilities related to the mixed use condominium project to be constructed on Lot 2 and that all rights and obligations of MP under this Agreement may be assigned to and assumed by a property owners association to be created to perform the management and maintenance responsibilities related to the mixed use condominium project to be constructed on Lot 4. The assignments and assumptions contemplated by this paragraph 7 shall not occur until after a certificate of occupancy has been issued for Lot 2 and Lot 4, respectively, and until a property owners association for the condominium project on each Lot has been incorporated pursuant to a recorded Declaration of Covenants. Except as set forth herein, neither GWO nor MP may assign this Agreement or any interest herein without the prior written consent of GURA, which may be withheld in its sole and absolute discretion.

8. **Assignment to City of Golden.** It is understood and acknowledged that GURA’s rights and obligations hereunder may be assigned to and assumed by the City of Golden in connection with the anticipated conveyance of the GURA Garage to the City of Golden. The assignment and assumption contemplated by this paragraph and the conveyance of the GURA Garage to the City of Golden shall not occur until after the earlier to occur of (a) the sale and conveyance of Lot 2 to GWO and Lot 4 to MP have been completed and the cross easements and maintenance agreement contemplated by this Agreement have been executed and recorded or (b) May 31, 2015.

9. **No Rights to Parking in GURA Garage.** Nothing contained in this Agreement, or in the easements granted pursuant to this Agreement, shall be construed to grant or convey a right in either GWO or MP to use the GURA Garage for parking.

10. **Agreement Conditioned on Closing and Conveyance.** This Agreement, and the grant of the respective easements and rights addressed herein, is conditional upon the conveyance of Lot 2 to GWO, and the conveyance of Lot 4 to MP. In the event that closing on the conveyance of Lot 2 does not occur before the date contemplated therefor in the Development Agreement, then, unless
otherwise agreed in writing by GURA, this Agreement shall be void and of no effect as between GWO and GURA. In the event that closing on the conveyance of Lot 4 does not occur before the date contemplated therefor in the Development Agreement, then, unless otherwise agreed by GURA or, to the extent this Agreement has been assigned to and assumed by the City of Golden, by the City of Golden, this Agreement shall be void and of no effect as between MP and GURA or the City of Golden, as applicable.

11. Additional Easement Provisions. The easements and agreements described in this Agreement and intended to be granted or entered into shall contain provisions reasonably acceptable to GURA the parties regarding (a) insurance, (b) indemnification, (c) restoration, repair and replacement of any damage arising from the exercise of the easements to be granted, (d) the security of the GURA Garage during and arising out of construction of the entry ways and (e) relocation in the event of a change in use of the GURA Garage property or improvements.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal proceeding shall be in Jefferson County, Colorado.

13. Execution of Documents. Each of the parties agrees to execute all of the documents necessary to effectuate this Agreement.

14. Amendments. This Agreement shall not be amended, except in writing, executed by all parties.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

GOLDEN URBAN RENEWAL AUTHORITY

By: ________________________________

STATE OF COLORADO  )
                   ) ss.
COUNTY OF JEFFERSON )

The foregoing Agreement was acknowledged before me on this _____ day of
__________, 2014, by ________________________, ______________________ of the Golden
Urban Renewal Authority.

Witness my hand and official seal.
My commission expires:

______________________________
Notary Public
GOLDEN WEST OFFICE LLC

By: ________________________________

STATE OF COLORADO  )
COUNTY OF JEFFERSON   )  ss.

The foregoing Agreement was acknowledged before me on this _____ day of ___________, 2014, by ____________________________, Member of the Golden West Office LLC.

Witness my hand and official seal.

My commission expires:

__________________________________________

Notary Public

MINERS POINT LLC

By: ________________________________

STATE OF COLORADO  )
COUNTY OF JEFFERSON   )  ss.

The foregoing Agreement was acknowledged before me on this _____ day of ___________, 2014, by ____________________________, Member of Miners Point LLC.

Witness my hand and official seal.

My commission expires:

__________________________________________

Notary Public
Exhibit A
Below Grade Plan and the Above Grade Plan

[See attached]
SUBORDINATION AND STANDSTILL AGREEMENT

This SUBORDINATION AND STANDSTILL AGREEMENT ("Agreement"), dated as of _____________, 20__, is made by and between THE GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the "Authority"), and _______________________ ("Lender").

WHEREAS, GOLDEN WEST OFFICE LLC, a Colorado limited liability company ("Borrower"), is now and hereafter may be indebted to Lender on account of loans or other extensions of credit or financial accommodations from Lender to Borrower made pursuant to the Loan Agreement, dated ______________, 20__, between Lender and Borrower, as the same may hereafter be amended or supplemented from time to time (the "Loan Agreement").

WHEREAS, the Authority and Borrower have entered into a Disposition and Development Agreement, dated as of ____________, 2014 (the “DDA”) pursuant to and subject to the terms and conditions of which the Authority has agreed to transfer certain land described therein (the “Land”, and together with any improvements constructed thereon from time to time, “Property”) to Borrower and Borrower has agreed to develop certain improvements on the Property.

WHEREAS, in connection with the DDA, upon the transfer of portions of the Property to Borrower, Borrower has agreed to record a declaration of restrictive covenants against such Property in the form of Exhibit A attached hereto (the “Restrictive Covenant”).

WHEREAS, as a condition to the Authority’s transfer of portions of the Property to Borrower, the Authority has required that Lender enter into a standstill agreement with respect to the exercise of Lender’s remedies under the Loan Agreement.

 WHEREAS, as a condition to Lender making any loan or extension of credit to Borrower, Lender has required that the Authority subordinate certain of its’ rights under the Restrictive Covenant to Lender’s rights under the Loan Agreement. Assisting Borrower in obtaining credit accommodations from Lender in order to construct improvements on the Property, and subordinating its interests pursuant to the terms of this Agreement, are in the Authority’s best interest.

ACCORDINGLY, in consideration of the loans and other financial accommodations that have been made and may hereafter be made by Lender to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and Lender hereby agree as follows:

1. **Definitions.** Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement. In addition, as used herein, the following terms have the meanings set forth below:

   "Borrower Default" means a default or event of default as defined in any agreement or instrument evidencing, governing, or issued in connection with the Indebtedness, including, but not limited to, the Loan Agreement.
"Collateral" means all collateral now or hereafter securing payment of the Indebtedness, including all proceeds thereof.

"Lien" means any security interest, mortgage, deed of trust, pledge, lien, charge, encumbrance, title retention agreement or analogous instrument or device, including the interest of the lessor under any capitalized lease and the interest of any bondsman under any payment or performance bond, in, of or on any assets or properties of a person or entity, whether now owned or hereafter acquired and whether arising by agreement or operation of law.

"Loan Documents" means any and all present and future agreements, documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the Indebtedness (including, without limitation, the Loan Agreement and the Note).

"Indebtedness" means the amount of the Note together with all interest thereon, and all fees, costs and other charges related thereto (including all interest, fees, costs and other charges accruing after the commencement of any case, proceeding or other action relating to the bankruptcy insolvency or reorganization of Borrower, whether or not allowed in such proceeding or other action), all renewals, extensions and modifications thereof, any future increases in the amount of the Note or future advances under the Note and any notes issued in whole or partial substitution therefor, and in each case together with any funds that may be loaned to Borrower or expended by Lender on Borrower’s behalf that are to be applied in payment of attorneys' fees, court costs, or other expenses of litigation, or insurance premiums or costs or expenses incurred in protecting or preserving the Collateral or in exercising any other rights or remedies of Lender or as a result of a Borrower Default as permitted by the Loan Documents.

"Note" means the Note (as defined in the Loan Agreement), dated _____________ and payable to the order of Lender in the principal amount of $_________________, together with all renewals, extensions and modifications thereof and any note or notes issued in substitution therefor.

2. **Subordination.** The Authority’s Lien on the Property, set forth in Section ____ of the Restrictive Covenant (the “Subordinated Lien”), is hereby expressly subordinated to the extent and in the manner hereinafter set forth to the Lender’s Lien thereon; and regardless of any priority otherwise available to the Authority by law or by agreement, Lender shall hold a first priority Lien in the Collateral, and any Lien claimed therein by the Authority shall be and remain fully subordinate for all purposes to the Lien of Lender therein for all purposes whatsoever.

3. **Action on Subordinated Lien.** The Authority agrees that it will not commence any action or proceeding against Borrower to enforce or foreclose upon the Subordinated Lien, or join with any creditor (unless Lender shall so join) in bringing any proceeding against Borrower under any bankruptcy, reorganization, readjustment of debt, arrangement of debt receivership, liquidation or insolvency law or statute of the federal or any state government, or foreclose upon, take possession of, sell, or dispose of the Property, or exercise or enforce any right or remedy available to the Authority with respect to any such Property, unless and until the Lender has (a) released its Lien in the Property or (b) provided written notice to the Authority, in accordance with Section 6(b) below, that it has elected not to exercise its remedies available with respect to the Property under the Loan Documents.
4. **Action Concerning Collateral.**

(a) Notwithstanding the Subordinated Lien or any other Lien now held or hereafter acquired by the Authority, but subject to the provisions of this Agreement, Lender may take possession of, sell, dispose of, and otherwise deal with all or any part of the Collateral (subject to the provisions of the Restrictive Covenant), and may enforce any right or remedy available to it with respect to Borrower or the Collateral, all without consent of the Authority except as specifically required by applicable law.

(b) Lender shall have no duty to preserve, protect, care for, insure, take possession of, collect, dispose of, or otherwise realize upon any of the Collateral, and in no event shall Lender be deemed the Authority’s agent with respect to the Property. All proceeds received by Lender with respect to any Collateral may be applied, first, to pay or reimburse Lender for all costs and expenses (including reasonable attorneys' fees) incurred by Lender in connection with the collection of such proceeds, and, second, to any Indebtedness secured by Lender's Lien in that Collateral, in any order that it may choose.

5. **Continuing Effect.** This Agreement shall constitute a continuing agreement of subordination. In reliance upon this Agreement and subject to the other provisions of this Section, Lender may at any time and from time to time:

(a) increase the amount of the Indebtedness and make additional advances and funds available to Borrower, which increased indebtedness and additional advances shall be afforded the priority of the Indebtedness granted hereunder;

(b) change the interest rate or change the amount of payment or extend the time for payment or renew or otherwise alter the terms of any Indebtedness or any instrument evidencing the same in any manner;

(c) subject to the provisions of this Agreement, sell, exchange, release or otherwise deal with any collateral or property at any time securing payment of the Indebtedness or any part thereof;

(d) release anyone liable in any manner for the payment or collection of the Indebtedness or any part thereof;

(e) subject to the provisions of this Agreement, exercise or refrain from exercising any right against Borrower or any other person; and

(f) apply any sums received by Lender, by whomsoever paid and however realized, to the Indebtedness in such manner as Lender shall deem appropriate.

The Authority hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of Lender's remedies permitted by applicable law or agreement.
6. **Notice of Default; Substitute Performance Consent.**

   (a) In the event of a Borrower Default under any of the Loan Documents, Lender will provide to the Authority a copy of any related notice of default delivered to Borrower, and such notice shall be sent to the Authority contemporaneously with the giving of such notice to Borrower. In the event of a default by Borrower under the DDA or the Restrictive Covenant, the Authority will provide to Lender a copy of any related notice of default delivered to Borrower, and such notice shall be sent to Lender contemporaneously with the giving of such notice to Borrower.

   (b) Lender shall accept performance by the Authority of any of the obligations of Borrower as though performed by Borrower. The payment or performance by the Authority shall be deemed timely for purposes of curing a Borrower Default by Borrower under the Loan Documents if (i) in the case of a monetary default susceptible of cure by the Authority, the Authority shall have made (or caused to be made) such payment within ten (10) days after the Authority’s receipt of a notice of with respect to such defaulted payment, and (ii) in the case of a non-monetary default susceptible of cure by the Authority, the Authority shall have tendered (or caused to be tendered) performance of the defaulted obligation within thirty (30) days after the Authority receipt of a notice of default with respect to such non-monetary default (or such longer period of time, not to exceed sixty (60) days, as may be necessary to cure any such non-monetary default which is not susceptible to cure by the Authority within thirty (30) days) (the “**Cure Period**”). Unless and until the earlier of (a) the expiration, without cure, of the Cure Period, or (b) receipt by the Lender of notice from the Authority that it does not intend to cure such default (the “**Cure Period Expiration**”), Lender shall neither accelerate the Indebtedness nor seek to enforce its non-Property related remedies against Borrower based on an occurrence of such default under the Loan Documents. Within thirty (30) days after the occurrence of the Cure Period Expiration, Lender shall notify the Authority whether Lender intends to exercise its remedies available with respect to the Property. If Lender notifies the Authority that it will exercise its remedies, Lender shall not commence any action to sell or transfer the Property pursuant to any foreclosure sale, trustee’s sale, deed-in-lieu or otherwise, for a period of five (5) months after the Cure Deadline, in order to enable the Authority to conduct a search for and obtain an alternative Developer for the Property (an “**Alternate Developer**”).

7. **Right to Purchase the Indebtedness.** If, subject to the provisions of this Agreement, Lender initiates any foreclosure action, negotiations for transfer of deed in lieu of foreclosure or exercises any other remedy which will result in the transfer of the Property to Lender, Lender shall immediately provide to the Authority at least thirty (30) days prior written notice of such action including the details and expected result and the anticipated timing thereof, and the Authority or any Alternate Developer designated by the Authority shall then have the right to purchase the Indebtedness from Lender at any time prior to transfer of title to the Property to Lender, without pre-payment penalties or fees, which shall not occur prior to the termination of the 30-day notice period to which the Authority is entitled. The purchase price shall be the outstanding principal balance of the Indebtedness attributable to the Property plus all accrued and unpaid interest thereunder (including default interest and late fees) and all reasonable fees, costs and other charges (including reasonable attorneys’ fees) that constitute obligations of Borrower under the Indebtedness attributable to the Property; provided that there shall be no pre-payment penalty or other fees. The Authority or the Alternate Developer designated by the Authority shall notify Lender of its intent to purchase prior to the later of such 30-day notice to which the
Authority is entitled or the transfer of the Property to Lender, and the Authority or the Alternate Developer, as applicable, shall close the purchase within thirty (30) days after the date of its notice to Lender agreeing to acquire the Property. Lender shall have no obligation to provide any representation or warranty to the Authority or the Alternate Developer in connection with such purchase except that the Lender will warrant that it has not created any encumbrance thereon.

8. **No Commitment.** None of the provisions of this Agreement shall be deemed or construed to constitute or imply any commitment or obligation on the part of Lender to make any future loans or other extensions of credit or financial accommodations to Borrower.

9. **Notice.** All notices and other communications hereunder shall be in writing and shall be deemed given (a) upon personal delivery, (b) on the first business day after receipted delivery to a courier service which guarantees next-business-day delivery (such as Federal Express or United Parcel Service), or (c) on the third business day after mailing, by registered or certified United States mail, postage prepaid, in each case to the appropriate party at its address set forth below:

   If to Lender:

   ______________________________
   ______________________________
   ______________________________
   Attention: ______________

   If to the Authority:

   The Golden Urban Renewal Authority
   Attention: Steve Glueck
   922 Washington Ave, Ste. 100
   Golden, Colorado 80401

   with a copy to:

   Brownstein Hyatt Farber Schreck LLP
   Attention: Carolynne White
   410 17th Street
   Denver, Colorado 80202

or at such other address as may hereafter be designated in writing by that party.

10. **Conflict in Agreements.** If the subordination provisions of any instrument evidencing the Indebtedness conflict with the terms of this Agreement, the terms of this Agreement shall govern.

11. **No Waiver.** No waiver shall be deemed to be made by either party of any of its rights hereunder unless the same shall be in writing signed on behalf of such party, and each such
waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates.

12. **Binding Effect; Acceptance.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, legal representatives, successors and assigns.

13. **Miscellaneous.** The paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

14. **Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial.** This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Colorado. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by any of them in connection with this Agreement may be venued in either the state or federal courts located in the County of Jefferson, Colorado. **THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, and shall have the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

[Signature page to follow]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above-written.

GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By: ____________________________
Name: __________________________
Its: __________________________

[LENDER]

By: ____________________________
Name: __________________________
Its: __________________________
EXHIBIT A

Form of Restrictive Covenant
DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS (this "Declaration") is made as of the ____ day of _____________, 20__ by GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado ("Declarant").

Recitals

A. Declarant owns the real property located in the City of Golden, State of Colorado (the "City"), more particularly described on Exhibit A attached hereto (the "Property"). The Property is located within the area of the City of Golden, Colorado (the “City”) covered by the Golden Urban Renewal Plan (a.k.a. Golden Downtown Redevelopment Plan), approved by the City Council of the City on December 31, 1989, by Ordinance No. 1078, as such Plan may be amended from time to time (the “Plan”), pursuant to which Declarant is charged with remedying blighted conditions within certain designated areas of the City.

B. In furtherance of the Plan, and in connection with the redevelopment of the Property in accordance with Colorado Urban Renewal Law, article 25 of title 31, C.R.S., as amended (the “Act”) and the Plan, Declarant has entered into a Disposition and Development Agreement with Golden West Office, LLC (“Developer”), dated as of November __, 2014 (the “Development Agreement”) with respect to the conveyance and redevelopment of the Property.

C. In accordance with the Development Agreement and in connection with the redevelopment of the Property pursuant to the Development Agreement or otherwise, Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth in this Declaration.
1. Declaration

In consideration of the foregoing, Declarant hereby declares as follows:

DECLARATION

Declaration. Declarant hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the limitations, covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration, all of which are for the purposes of enhancing, maintaining and protecting the value and attractiveness of the Property and remedying blighted conditions within certain areas of the City.

Covenants Running with the Land. The covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, and shall bind the owner(s) of, and all other parties having any right, title or interest in, the Property or any portions thereof, and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

DEFINITIONS

Basic Definitions. As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

“Act” has the meaning given to that term in Recital B above.

"Applicable Law" means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

"Approval Request" has the meaning given to that term in Section 3.03(b) below.

"City" has the meaning given to that term in Recital A above.

“Condominium Documents” has the meaning given to that term in Section 3.02 below.

"Declarant" has the meaning given to that term in the introductory paragraph above.

"Declaration" has the meaning given to that term in the introductory paragraph above.
“Developer” has the meaning given to that term in Recital B above.

“Development Agreement” has the meaning given to that term in Recital B above.

"Development Plan" means the plan for development of the Property set forth on Exhibit B attached hereto.

"Failure Notice" has the meaning given to that term in Section 3.01(b) below.

"Grading" means any excavation, earth movement, filling, rough grading, stockpiling, paving, drainage modification or other alteration of the natural ground surface or its elevation.

"Improvement" means any building, structure or other permanently attached or imbedded improvement, including walls, driveways, sidewalks, plazas, antennae, satellite dishes, heating and cooling equipment and other utility systems.

"Landscaping" means irrigation and drainage, vegetation installation and removal, art, furniture and other landscaping activities.

"Owner" means the record holder of legal fee simple title to the Property, a portion thereof or an interest therein, including, but not limited to, Developer and any successors and assigns of Developer as the owner of the Property. If there is more than one record holder of legal title to the Property, each record holder is an Owner.

"Person" means any natural person, corporation (including any non-profit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

“Plan” has the meaning given to that term in Recital A above.

"Plans and Specifications" means the plans and specifications for any and all proposed development, construction, installation, alteration or demolition of Improvements, Landscaping, Signs or Grading on the Property consistent with the Development Plan.

"Property" has the meaning given to that term in Recital A above.

Usage. Unless the context of this Declaration clearly requires otherwise:

terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;

references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Declaration;
references to one gender include all genders;

"including" is not limited;

"or" has the inclusive meaning represented by the phrase "and/or";

the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified;

reference to any breach or default shall not include any immaterial breach or default, taking into account all facts and circumstances; and

reference to any agreement (including this Declaration), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

DESIGN APPROVAL

Design Approval and Control.

No Person, with respect to the Property, may, without the prior written consent of Declarant:

perform any Grading;

construct any building, structure or other permanently attached or imbedded improvement, including walls, driveways, sidewalks, plazas, antennae, satellite dishes, heating and cooling equipment and other utility systems ("Improvements");

subject to Section 3.01(c) below, make any physical or cosmetic alteration or modification to existing Improvements;

install or alter on any Improvement any exterior sign or any interior sign that is visible from outside such Improvement;

install or alter any Landscaping; or

change the exterior appearance of Improvement located thereon,
in each instance, in any manner that is inconsistent with the plans and specifications set forth in the Development Agreement.

Prior to taking any action described in Section 3.01(a) above, an Owner shall submit to Declarant all Plans and Specifications for the Declarant’s review and approval simultaneously with any submittal to the City with respect thereto. The Plans and Specifications shall describe the proposed construction, alteration, installation or demolition of Improvements, Landscaping, signs or Grading in reasonable detail, and shall be prepared in accordance with the Development Plan. Declarant, through its Executive Director, shall approve, approve with conditions or deny such submittal within 30 days after receiving such submittal; provided, that if, in the opinion of the Executive Director, such submittal pertains to non-material changes to previously approved Plans and Specifications, Declarant shall approve, approve with conditions or deny such submittal within five (5) business days of such submittal. All such approvals or denials shall be binding upon all Persons. Notwithstanding anything to the contrary set forth herein, Declarant’s approval of any Plans and Specifications may be withheld if an Owner submitting the same is not in compliance with the provisions of the Development Agreement applicable to the Property or any other property described therein.

Notwithstanding anything to the contrary contained herein, Improvements, Signs, alterations, modifications, installations, furniture and fixtures that:

- are completely within an Improvement; and
- do not alter the exterior appearance of such Improvement and are not visible from the outside of the Improvement, and
- comply with the Development Plan,

may be undertaken without Declarant consent, but are subject to all other covenants, conditions and restrictions contained in this Declaration.

Each Owner shall comply with the Development Plan.

Declarant or its designated representative may monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved Plans and Specifications and construction procedures. Declarant or any of its designated representatives may enter upon the Property at any reasonable time or times to observe the progress, work status or completion of any project, and Declarant hereby grants, creates, declares and reserves to itself and its designated representatives an easement therefor. In addition to the remedies described in Article VI below, Declarant may withdraw approval of any project and require all activity of such project to be stopped if deviations from the approved Plans and Specifications or approved construction practices are not corrected within seven (7) days after written notification to the Owner specifying such deviation or, if such deviations are not reasonably subject to correction within such period, such longer period of time as may be
reasonably necessary provided that the Owner has commenced and is diligently pursuing correction of the same.

Notwithstanding any provision to the contrary contained in this Declaration, Declarant shall be exempt from the limitations and prohibitions contained in this Declaration.

Declarant may, in its sole and absolute discretion, grant to any Owner an exception from compliance with any or all of the provisions of this Declaration.

Condominium Documents. Prior to recording any condominium declaration or condominium map with respect to the Property, an Owner shall submit to Declarant drafts of the condominium declaration, condominium map and the articles and bylaws of the owners’ association therefor (the “Condominium Documents”), consistent in all respects with the Development Plan, for the Declarant’s review and approval. Declarant shall strive to approve, approve with conditions or deny such submittal within 30 days after receiving such submittal, failing which, the Owner may provide a notice of such failure (the “Failure Notice”) to Declarant. Declarant's failure to approve, approve with conditions or deny such submittal within 30 days after its receipt of a Failure Notice shall be deemed an approval of such submittal. All such approvals or denials shall be binding upon all Persons. Notwithstanding anything to the contrary set forth herein, Declarant’s approval of any Condominium Documents may be withheld if an Owner submitting the same is not in compliance with the provisions of the Development Agreement applicable to the Property or any other property described therein.

Lapse of Approval. Any approval issued by Declarant shall lapse and become void one year after such approval is granted unless extended by Declarant in writing and unless the terms and conditions of any consents, approvals or permits issued by Declarant specifically provide otherwise. In addition, an approval issued by Declarant will lapse and become void if any building permit or approval issued by the City or by a governmental or quasi-governmental entity for the same project lapses or is revoked or suspended.

Liability. Neither Declarant nor any of its officers, members, directors, employees or agents shall be responsible or liable for any defects, errors or omissions in any Plans or Specifications or Condominium Documents submitted, revised or approved under this Article III, nor for any defects, errors or omissions in construction pursuant to the Plans and Specifications. A consent or approval issued by Declarant means only that Declarant believes that the construction, alteration, installation or other work for which the consent or approval was requested is consistent with the Development Plan. No such consent or approval shall be interpreted to mean that the construction, alteration, installation, demolition or other work covered thereby, or any provision of the Condominium Documents, (a) complies with Applicable Law or (b) is free from defects, errors or omissions. No consent, approval or permit issued by Declarant shall relieve Owners or other Persons of their obligations to comply with Applicable Law.
Completion of Work.

No Owner shall unduly delay or discontinue the construction, alteration, installation or demolition of any Improvement or Landscaping once it is commenced.

No Owner shall fail to substantially complete any Improvement within the timeframe set forth in the Development Agreement, unless specifically granted additional time by Declarant.

Upon the substantial completion of any Improvement or Landscaping, as applicable, the Owner shall deliver to Declarant a written certificate from a duly licensed architect or engineer responsible for the construction, alteration, installation or demolition, in a form reasonably satisfactory to Declarant, certifying that the Improvement or Landscaping, as applicable, has been substantially completed in accordance with the approved Plans and Specifications.

Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the conduct by Declarant or its employees, agents or contractors of any activity, including the erection or maintenance of temporary structures, Improvements, Landscaping, signs, or Grading necessary or convenient to the use, operation, development, construction, marketing or sale of the Property.

TERM, AMENDMENTS AND TURNOVER DATE

Term. Except as provided in Section 5.02 below, the covenants, conditions, restrictions, reservations, easements, charges and servitudes set forth in this Declaration shall run with and bind the Property and every part thereof, until the earlier to occur of (i) Declarant’s issuance of a certificate of completion for the Improvements on the Property as described in, and in accordance with, the Development Agreement or (ii) 10 years from the date this Declaration is recorded, unless Declarant terminates this Declaration pursuant to an instrument recorded prior thereto.

5.02 Amendment. This Declaration may be amended at any time or terminated at any time by Declarant. Such amendment or revocation shall be evidenced in writing by an instrument making appropriate reference hereto and shall be recorded in the official records of the office of the Clerk and Recorder for Jefferson County, Colorado.

ENFORCEMENT AND FEES

Enforcement of Restrictions.

If an Owner violates any term or condition set forth in this Declaration or in the Development Agreement, and fails to cure or remedy such violation within thirty (30) days after
written notice thereof from Declarant or, if such deviations are not reasonably subject to cure or remedy within such period, such longer period of time as may be reasonably necessary provided that the Owner has commenced and is diligently pursuing cure or remedy of the same, Declarant shall have the following rights and remedies:

Declarant may, by written notice to the Owner, revoke any approval previously granted to the Owner by Declarant, in which event the Owner shall, upon receipt of such notice, immediately cease any construction, alteration, installation or demolition covered by the approval so revoked.

Declarant may, but has no obligation to, enter upon the Property and cure such violation at the Owner's sole cost and expense, and hereby grants, creates, declares and reserves to itself and its representatives an easement therefor. If Declarant cures any such violation, the Owner shall pay to Declarant the amount of all costs and expenses incurred in connection therewith within 30 days after the Owner receives demand therefore from Declarant.

Declarant may sue the Owner to restrain and enjoin such violation of this Declaration.

Declarant shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

Expenses; Lien. Any fines and all costs and expenses of any nature whatsoever (including, but not limited to, legal fees and salaries of personnel) incurred in connection with any Owner’s violation of this Declaration and the exercise by Declarant of any of the foregoing remedies, including, without limitation, the amount of any funds expended by the City and Declarant in discharging or removing any liens or encumbrances levied against the Property due to acts, obligations or defaults of any Owner or its successors, transferees or contractors, shall be charges and continuing liens upon the Property. If the Owner fails to pay all amounts owed within such 30 days after demand therefor by Declarant, Declarant may file a notice of lien in the Official Records of Jefferson County, Colorado in which event the foregoing lien shall be perfected, and may enforce such lien by filing an action for judicial foreclosure. If the default is cured before completing a judicial foreclosure, including payment of all costs and expenses incurred by Declarant, Declarant shall record a notice of satisfaction and release of lien.

MISCELLANEOUS

Interpretation of the Declaration. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant’s construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.
Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

Reference to Declaration and Deeds. Deeds to and instruments affecting the Property or any portion thereof may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth herein shall be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Exhibits. All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

Governing Law. This Declaration shall be governed by and construed in accordance with Colorado law.

Attorneys' Fees. In the event of any dispute under or with respect to this Declaration, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party, whether incurred before or at trial, on appeal, in bankruptcy or in post-judgment collection.

Notices. All notices to be delivered to Owners shall be delivered to the address for such Owner in the real property tax records of the City, unless an Owner notifies Declarant of an alternate address. All notices, including submittals of Plans and Specifications and Condominium Documents, and demands intended to be served upon Declarant shall be sent to the following address or such other address as Declarant may designate from time to time by notice to the Owners:
Waivers. No waivers by Declarant of any right of Declarant shall constitute a waiver by Declarant of any other right of Declarant.

Rule Against Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of George W. Bush, the current President of the United States and William Clinton, the former: (1) Queen Elizabeth II, the queen of the United Kingdom of Great Britain and Northern Ireland; (2) John D. Rockefeller III, David Rockefeller, and Laurance S. Rockefeller, sons of John D. Rockefeller, Jr., and Abby Rockefeller, daughter of John D. Rockefeller, Jr.; and (3) former U.S. Presidents George H. W. Bush and William J. Clinton, and U.S. President Barack H. Obama.
Declarant has caused its name to be signed by the signature of a duly authorized official as of the day and year first written above.

DECLARANT:

GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By:______________________________
Name:____________________________
Title:____________________________

STATE OF COLORADO )
COUNTY OF ____________) ss.

On this ____ day of ________________, 200__, before me, personally appeared ____________________, who acknowledged himself to be the _______________ of GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado, and that he/she, as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, on behalf of such body corporate and politic of the State of Colorado.

Witness my hand and official seal.

[SEAL]
______________________________
Notary Public

My commission expires:________________________
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY
AFTER RECORDING, RETURN TO:

BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 17TH STREET, SUITE 2200
DENVER, CO  80202
ATTN: CAROLYNNE WHITE

DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS (this "Declaration") is made as of the ____ day of ___________, 20__ by GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado ("Declarant").

Recitals

A. Declarant owns the real property located in the City of Golden, State of Colorado (the "City"), more particularly described on Exhibit A attached hereto (the "Property"). The Property is located within the area of the City of Golden, Colorado (the “City”) covered by the Golden Urban Renewal Plan (a.k.a. Golden Downtown Redevelopment Plan), approved by the City Council of the City on December 31, 1989, by Ordinance No. 1078, as such Plan may be amended from time to time (the “Plan”), pursuant to which Declarant is charged with remedying blighted conditions within certain designated areas of the City.

B. In furtherance of the Plan, and in connection with the redevelopment of the Property in accordance with Colorado Urban Renewal Law, article 25 of title 31, C.R.S., as amended (the “Act”) and the Plan, Declarant has entered into a Disposition and Development Agreement with Golden West Office, LLC ("Developer"), dated as of November __, 2014 (the “Development Agreement”) with respect to the conveyance and redevelopment of the Property.

C. In accordance with the Development Agreement and in connection with the redevelopment of the Property pursuant to the Development Agreement or otherwise, Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth in this Declaration.

1. Declaration

In consideration of the foregoing, Declarant hereby declares as follows:
DECLARATION

Declaration. Declarant hereby declares that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the limitations, covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration, all of which are for the purposes of enhancing, maintaining and protecting the value and attractiveness of the Property and remediing blighted conditions within certain areas of the City.

Covenants Running with the Land. The covenants, conditions, restrictions, reservations, easements, charges, liens, servitudes and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, and shall bind the owner(s) of, and all other parties having any right, title or interest in, the Property or any portions thereof, and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

DEFINITIONS

Basic Definitions. As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

“Act” has the meaning given to that term in Recital B above.

"Applicable Law" means any law, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any authority having jurisdiction with respect thereto or charged with the administration thereof.

"City" has the meaning given to that term in Recital A above.

"Declarant" has the meaning given to that term in the introductory paragraph above.

"Declaration" has the meaning given to that term in the introductory paragraph above.

“Developer” has the meaning given to that term in Recital B above.

“Development Agreement” has the meaning given to that term in Recital B above.

"Improvement" means any building, structure or other permanently attached or imbedded improvement, including walls, driveways, sidewalks, plazas, antennae, satellite dishes, heating and cooling equipment and other utility systems.

"Owner" means the record holder of legal fee simple title to the Property, a portion thereof or an interest therein, including, but not limited to, Developer and any successors and
assigns of Developer as the owner of the Property. If there is more than one record holder of legal title to the Property, each record holder is an Owner.

"Person" means any natural person, corporation (including any non-profit corporation), partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

“Plan” has the meaning given to that term in Recital A above.

"Property" has the meaning given to that term in Recital A above.

Usage. Unless the context of this Declaration clearly requires otherwise:

terms defined in the singular may be used in the plural, and terms defined in the plural may be used in the singular;

references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Declaration;

references to one gender include all genders;

"including" is not limited;

"or" has the inclusive meaning represented by the phrase "and/or";

the words "hereof," "herein," "hereby," "hereunder" and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified;

reference to any breach or default shall not include any immaterial breach or default, taking into account all facts and circumstances; and

reference to any agreement (including this Declaration), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

USE RESTRICTIONS

Use Restriction. Until the expiration of this Declaration, the first/ground floor of any Improvements constructed on the Property, including any condominium units located therein, shall be marketed, sold, leased, rented, transferred, used and occupied by any Owner or other Person, only for [commercial – Phase 1][retail/restaurant – Phase 2] purposes, and no portion
thereof shall be marketed, sold, leased, rented transferred, used or occupied by any Owner or other Person for any residential purposes.

Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the conduct by Declarant or its employees, agents or contractors of any activity, necessary or convenient to the use, operation, development, construction, marketing or sale of the Property.

TERM, AMENDMENTS AND TURNOVER DATE

Term. Except as provided in Section 5.02 below, the covenants, conditions, restrictions, reservations, easements, charges and servitudes set forth in this Declaration shall run with and bind the Property and every part thereof, until the earlier to occur of (i) twelve (12) months after Declarant’s issuance of a certificate of completion for the Improvements on the Property as described in, and in accordance with, the Development Agreement or (ii) 10 years from the date this Declaration is recorded, unless Declarant terminates this Declaration pursuant to an instrument recorded prior thereto.

Amendment. This Declaration may be amended at any time or terminated at any time by Declarant. Such amendment or revocation shall be evidenced in writing by an instrument making appropriate reference hereto and shall be recorded in the official records of the office of the Clerk and Recorder for Jefferson County, Colorado.

ENFORCEMENT AND FEES

Enforcement of Restrictions.

If an Owner violates any term or condition set forth in this Declaration or in the Development Agreement, and fails to cure or remedy such violation within thirty (30) days after written notice thereof from Declarant or, if such deviations are not reasonably subject to cure or remedy within such period, such longer period of time as may be reasonably necessary provided that the Owner has commenced and is diligently pursuing cure or remedy of the same, Declarant shall have the following rights and remedies:

Declarant may, but has no obligation to, enter upon the Property and cure such violation at the Owner's sole cost and expense, and hereby grants, creates, declares and reserves to itself and its representatives an easement therefor. If Declarant cures any such violation, the Owner shall pay to Declarant the amount of all costs and expenses incurred in connection therewith within 30 days after the Owner receives demand therefore from Declarant.

Declarant may sue the Owner to restrain and enjoin such violation of this Declaration.

Declarant shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.
Expenses; Lien. Any fines and all costs and expenses of any nature whatsoever (including, but not limited to, legal fees and salaries of personnel) incurred in connection with any Owner’s violation of this Declaration and the exercise by Declarant of any of the foregoing remedies, including, without limitation, the amount of any funds expended by the City and Declarant in discharging or removing any liens or encumbrances levied against the Property due to acts, obligations or defaults of any Owner or its successors, transferees or contractors, shall be charges and continuing liens upon the Property. If the Owner fails to pay all amounts owed within such 30 days after demand therefor by Declarant, Declarant may file a notice of lien in the Official Records of Jefferson County, Colorado in which event the foregoing lien shall be perfected, and may enforce such lien by filing an action for judicial foreclosure. If the default is cured before completing a judicial foreclosure, including payment of all costs and expenses incurred by Declarant, Declarant shall record a notice of satisfaction and release of lien.

MISCELLANEOUS

Interpretation of the Declaration. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, Declarant’s construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.

Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

Reference to Declaration and Deeds. Deeds to and instruments affecting the Property or any portion thereof may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, charges, liens and servitudes set forth herein shall be binding upon the grantee-owner or other Person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Exhibits. All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.
**Governing Law.** This Declaration shall be governed by and construed in accordance with Colorado law.

**Attorneys' Fees.** In the event of any dispute under or with respect to this Declaration, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party, whether incurred before or at trial, on appeal, in bankruptcy or in post-judgment collection.

**Notices.** All notices to be delivered to Owners shall be delivered to the address for such Owner in the real property tax records of the City, unless an Owner notifies Declarant of an alternate address. All notices, including submittals of Plans and Specifications and Condominium Documents, and demands intended to be served upon Declarant shall be sent to the following address or such other address as Declarant may designate from time to time by notice to the Owners:

The Golden Urban Renewal Authority  
Attention: Steve Glueck  
922 Washington Ave, Ste. 100  
Golden, Colorado 80401

with a copy to:

Brownstein Hyatt Farber Schreck LLP  
Attention: Carolynne White  
410 17th Street  
Denver, Colorado 80202

**Waivers.** No waivers by Declarant of any right of Declarant shall constitute a waiver by Declarant of any other right of Declarant.

**Rule Against Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of George W. Bush, the current President of the United States, and William Clinton, the former; (1) Queen Elizabeth II, the queen of the United Kingdom of Great Britain and Northern Ireland; (2) John D. Rockefeller III, David Rockefeller, and Laurance S. Rockefeller, sons of John D. Rockefeller, Jr., and Abby Rockefeller, daughter of John D. Rockefeller, Jr.; and (3) former U.S. Presidents George H. W. Bush and William J. Clinton, and U.S. President Barack H. Obama.

[Remainder of page intentionally blank]
Declarant has caused its name to be signed by the signature of a duly authorized official as of the day and year first written above.

DECLARANT:

GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado

By: ______________________________
Name: ___________________________
Title: ____________________________

STATE OF COLORADO  )
COUNTY OF ____________ ) ss.

On this ____ day of _____________, 200__, before me, personally appeared ____________________, who acknowledged himself to be the _____________ of GOLDEN URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado, and that he/she, as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, on behalf of such body corporate and politic of the State of Colorado.

Witness my hand and official seal.

[SEAL] ______________________________
Notary Public

My commission expires: ________________________
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY