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Kathleen Neel - Summit County Recorder

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**DECLARATION OF COVENANT  
FOR REAL ESTATE TRANSFER ASSESSMENT**



638.00

This DECLARATION OF COVENANT FOR REAL ESTATE TRANSFER ASSESSMENT (the "Covenant") is created by MW Fourth Street Crossing LLC, a Colorado limited liability company with an address of 12655 W 54th Drive, Arvada, CO 80002, United States ("Owner"), to be effective on July 2, 2019 (the "Effective Date").

WHEREAS, Owner is the owner of certain property in Summit County, Colorado, more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is located in the Town of Silverthorne, Colorado (the "Town");

WHEREAS, the future owners of the Property will be the beneficiaries of certain amenities, services, and benefits, such as parks, trails, recreation, arts and cultural activities and infrastructure improvements and capital;

WHEREAS, because such public amenities, services, and benefits are of significant value to future owners of the Property, and will be reflected in future real property values, Owner has determined that it is reasonable and appropriate to distribute the costs thereof by means of an assessment payable to the Town and expressed as a percentage of future sales prices of lots and tracts on the Property; and

WHEREAS, Owner and Town previously entered into a Private Development Agreement for the Property, which contains in section 3.6 thereof an agreement by the Owner to make each sale or transfer of property subject to a Real Estate Transfer Assessment of 1% of the purchase price; provided, that such assessment shall not apply to the initial sale by Owner or to the first sale or transfer of any portion of, or interest in, the Property by Owner's immediate successor in title to the Property but the RET Assessment shall apply to each and every sale thereafter; and

WHEREAS, each person acquiring any interest in any portion, lot or tract in the Property shall be deemed for all purposes to have assented and agreed, as an essential condition of any conveyance to it, to the provisions of this Covenant, to have agreed to comply with this Covenant and to have waived any right to challenge or contest the provisions hereof or to seek any refund or abatement of the assessment payable hereunder.

NOW THEREFORE, Owner hereby covenants and binds the Property as follows:

1. **Definitions.** For purposes of this Covenant, the following terms shall have the following meanings:
  - a. "Consideration" means the actual cash paid or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or

title to any portion of or interest in the Property, including the amount of any liens, mortgages, contracted indebtedness, or other encumbrances given to secure the purchase price, or any part thereof, remaining unpaid on such Property at the time of sale, but excluding the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal governmental corporation or district for taxes, assessments, special benefits or improvements.

b. "Conveyance" means a conveyance of ownership or title to any portion of or interest in the Property as evidenced by any deed or instrument or writing wherein or whereby title to such Property is granted or conveyed.

c. "Final Court Action" means a final order or opinion issued by a court of competent jurisdiction by which the Town or Owner is bound, and wherein no appeal can be taken or the time for filing an appeal has expired.

2. Covenant. An assessment based on a percentage of the Consideration paid on the transfer of any portion of or interest in the Property (the "Assessment") shall be due and payable by the grantee at the time of each transfer and shall apply to each transfer of any portion of or interest in the Property. The Assessment shall be 1% of the Consideration for such transfer. Owner hereby waives, on behalf of itself and its successors in title, any right to challenge the Assessment on any basis.

3. Exemptions. The Assessment shall not apply to any of the following:

a. Any sale or transfer of all or any portion of, or interest in, the Property by Owner to any third party (hereinafter, each, a "Direct Owner Successor").

b. Any sale or transfer of all or any portion of, or interest in, the Property by any Direct Owner Successor to any third party (the Assessment shall apply to each and every sale or transfer thereafter).

c. A document wherein the United States or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the state, is either the grantor or grantee.

d. A document granting or conveying title to real property in consequence of a gift of such property, where no consideration other than love and affection, charitable donation or a nominal compensation is evidenced by the terms of the instrument of transfer.

e. A document terminating or evidencing termination of a joint tenancy in real property except where additional consideration of value is paid in connection with such termination, or a decree or agreement partitioning real property held under common ownership unless consideration of value is paid in connection therewith.

f. A transfer for estate planning purposes where the grantor and grantee are family members (related by blood, marriage, civil union or legal adoption) or entities in which the individuals or principals (including the settlors of any trust) in the grantor entity

are family members of the individuals or principals (including the beneficiaries of any trust) in the grantee, and any transfer of title or change of interest in real property by reason of death.

g. A transfer made pursuant to a merger or consolidation of corporations or by a subsidiary to a parent corporation which does not result in a change of control.

h. A deed or conveyance made and delivered without consideration for the purpose of: confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments, removing clouds on titles; or granting easements, rights-of-way or licenses.

i. A decree or order of a court of record determining or vesting title, including without limitation the final award of title pursuant to a condemnation proceeding, a dissolution of marriage proceeding or quiet title proceeding.

k. A transfer of ownership from one or more individuals or from an entity, to an entity where the individuals or principals in the grantee entity are the same as the individuals or the principals in the grantor.

k. A mineral deed or royalty deed.

l. A deed of trust or similar instrument to secure a debt or other obligation, or releases of such instruments or of property which is security for a debt or other obligation.

m. A lease of real property (or assignment or transfer of any interest in any such lease) for a term of 50 years or less. If the lease is for more than 50 years, the Assessment shall be paid based on the fair market value of the leased premises, as though the conveyance were in fee simple.

4. Application for Exemption. If a document evidencing a transfer which is exempt from the Assessment does not contain language clearly showing its intent and character, the grantor or grantee may apply for and obtain from the Town a certificate of exemption to be affixed to such deed or instrument of transfer. If the Town determines that the exemption applies, any amounts previously paid shall be promptly refunded to the applicant.

5. Receipt and Application of Funds. The Assessment shall be collected at closing and paid directly to the Town. All Assessment amounts received by the Town shall be accounted for separately. A portion shall be used to administer the collection of the Assessment, and the balance thereof will go to the Town's general fund.

6. Penalty. The Assessment, if not paid when due, shall bear simple interest at the rate of 18% per annum until so paid. The amount of the Assessment, and if not paid when due the interest, shall constitute a first and prior lien on the portion of the Property transferred. Such lien may be foreclosed in the same manner as a deed of trust or by any other means available to the Town under law. The remedies provided for herein

shall be cumulative, not exclusive, and shall be in addition to any other remedies provided by law.

7. Relationship to Land. Owner acknowledges and agrees that the obligations imposed by this Covenant are related to and touch and concern the Property.

8. Recording. Following its approval by the Town and execution by Owner, this Covenant shall be recorded in the records of Summit County, Colorado.

9. Enforcement. This Covenant is made for the express benefit of the owners and occupants of the Property and for the additional express benefit of the Town. The Town shall have the right and power to bring suit for either legal or equitable relief for any breach, default or lack of compliance with the provisions of this Covenant, provided that no suit may be filed until Owner or its successors and assigns is provided with written notice of such breach and fails to cure such breach or lack of compliance within 10 days after the mailing of such notice. Further, the Town shall have the right to refuse to process, or deny any application for, a building permit or certificate of occupancy for any portion of the Property for which an Assessment is owed and not paid. Neither Owner nor any Direct Owner Successor shall have any obligation to enforce this Covenant, and the failure of any party to pay an Assessment shall not constitute a default by Owner or any Direct Owner Successor.

10. Defense and Cure of Covenant.

a. In the event of any legal challenge by a third party to the validity or enforceability of any provision of this Covenant, Owner shall cooperate with the Town in the defense of such challenge and each party to such challenge shall bear its own costs and attorney fees. During the pendency of any such legal challenge, through and including any Final Court Action, Owner shall not assert any legal position contrary to the enforceability of this Covenant.

b. If a Final Court Action determines this Covenant to be invalid or unenforceable, in whole or in part, Owner shall cooperate with the Town and use its efforts to cure any legal defects identified by such Final Court Action, and immediately upon such cure, take such actions as may be necessary to render the terms of this Covenant effective and enforceable.

c. If this Covenant is held to be invalid or unenforceable by a Final Court Action, Owner shall not be required to purchase or repurchase any property to effect a cure nor be required to pay any transfer fees not collectable by the Town.

11. Severability. If any provision of this Covenant is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

12. Amendment. This Covenant shall not be amended or terminated without the prior written authorization of the Town. If the Town provides such consent, no amendment shall be effective unless it is contained in a written instrument signed and

acknowledged by Owner or its successors in the same manner as a deed and duly recorded in the records of Summit County, Colorado.

13. Term. Except as provided herein, the term of this Covenant shall be perpetual.

14. Governing Law and Venue. This Covenant shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any legal action arising out of this Covenant shall be in Summit County, Colorado.

15. Binding Effect. The provisions of this Covenant shall run with the Property and be binding on all persons who hereafter acquire any interest in the Property, whether as an owner, renter, trustee, or mortgage beneficiary or otherwise.

16. Encumbrance. Until terminated, each and every provision contained in this Covenant shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

IN WITNESS WHEREOF, Owner has executed this Covenant as of the Effective Date.

MW Fourth Street Crossing LLC, a Colorado limited liability company

By: [Signature]  
Name: Tim Fredregill  
Title: Vice President and Secretary

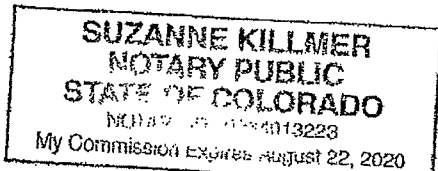
STATE OF COLORADO )  
COUNTY OF Denver ) ss.

Acknowledged, subscribed, and sworn to before me this 21st day of June, 2019, by Tim Fredregill as Vice President and Secretary of MW Fourth Street Crossing LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

[Signature]  
Notary Public



**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 1R, 2R, 4R, 5R, 6R, 7R, 8R, 10R of Fourth Street Crossing Subdivision, a Resubdivision Plat of Lots 1-12, 13R, 14-24 & Tract A, Block B, Silverthorne Colorado Subdivision, Located in Section 12, Township 5S, Range 78W of the 6th Principal Meridian, Town of Silverthorne, Summit County, Colorado, which Plat has been recorded July 2, 2019, as Reception No. 1201758, County of Summit, State of Colorado.