



**RESTRICTIVE COVENANT**

This Restrictive Covenant (the "Covenant") is entered into this 25 day of January, 2023 ("Effective Date") by and between 3401 W. 29<sup>th</sup> Ave., LLC, a Colorado limited liability company ("Company") and West Highland Neighborhood Association, a Colorado nonprofit corporation ("WHNA"). For purposes of this Covenant, Company, and all future owners of the Property (as defined below) may each be referred to below as a "Company Party" or the "Company Parties." One or more of the Company Parties or WHNA are sometimes referred to below individually as a "Party" or collectively as the "Parties."

**I. RECITALS**

A. Company owns the real Property located at 3401 W. 29<sup>th</sup> Ave., Denver, Colorado, more specifically described by the legal description in the attached **Exhibit A**, which is incorporated by reference into this Covenant (the "Property").

B. There is a church building ("Building") currently located on the Property.

C. The Property is currently zoned U-SU-B.

D. Company intends to develop the Property. That development will involve the reuse of the currently-existing Building.

E. As part of the development process, Company has submitted an application to the City and County of Denver ("City") to change the zoning of the Property to U-MX-2X.

F. In its development of the Property, Company does not intend to use all available uses that are allowed in U-MX-2X zoning.

G. WHNA, as a neighborhood association, is interested in the future uses of the building as set forth in Section II.C. below.

H. WHNA and Company have discussed redevelopment of the Property and have agreed to a specific set of uses for the Property that are allowed under the Denver Zoning Code, should the rezoning of U-MX-2X (with or without waivers) be approved.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, WHNA and Company agree as follows:

**II. AGREEMENT AS TO RESTRICTIVE COVENANT**

A. The above Recitals are hereby incorporated into and made a part of this Covenant.

B. This Covenant and the land use restrictions contemplated herein each are expressly contingent upon and shall only be binding upon the Property and Company, if/when the re-zoning

of the Property to the U-MX-2X Zone District is approved by the City. In the event the U-MX-2X Zone District is not approved by the City and/or the application and proposed development of the Property by Company is abandoned so that the U-MX-2X zoning does not go into effect, this Covenant shall be null and void, of no further force and effect, and shall not be recorded in the records of the City and County of Denver Clerk & Recorder. If the re-zoning of the Property to the U-MX-2X Zone District is approved by the City, this fully-executed Covenant shall be effective and shall be recorded by Company or WHNA in the records of the City and County of Denver Clerk & Recorder.

C. Company and WHNA agree that, notwithstanding all of the uses permitted in the U-MX-2X Zone District under the Denver Zoning Code, only the following uses are permitted on the Property (“Approved Uses”) and subject to the additional limitations contained within this Covenant as well as all necessary approval processes and requirements contained within the Denver Zoning Code:

1. Residential, Household Living
  - Dwelling, Single Unit
  - Dwelling, Two Unit
  - Dwelling, Multiple Unit – density determined by lot size
  - Dwelling, Live/Work
2. Residential, Group Living – Residential Care, Type 1
3. Community/Public Services
  - Community Center
  - Day Care Center
4. Cultural/Special Purpose/Public Parks & Open Space
  - Library
  - Museum
5. Education
  - Elementary School
  - Vocational or Professional School, excluding any culinary vocational school use or culinary professional school use
6. Public and Religious Assembly
  - None of the restrictions and/or limitations in this Restrictive Covenant shall apply to any Religious Assembly use at the Property and/or in the Building as defined by The City and County of Denver Municipal Code.
7. Arts, Recreation, and Entertainment, Indoor
8. Eating and Drinking Establishment
  - a. Indoor Space Limitation: no more than 1,200 square feet of indoor space, including all area associated with such eating and drinking establishment, including, but not limited to, preparation areas, back

of house areas and food storage areas. For the avoidance of doubt, common Building facilities such as restrooms and non-food related storage areas shall not count towards the 1,200 square foot restriction;

- b. Accessory Outdoor Eating and Serving Area Limitation: no more than 1,000 square feet of accessory Outdoor Eating and Serving Area and a maximum capacity of thirty (30) individuals;
- c. No full-service restaurant shall be allowed on the Property;
- d. Type I hood system(s), ventless convection ovens, or any other equipment that can lead to grease or grease by-products, are not permitted. Only Type II hoods are permitted. For clarity, as used herein, a Type I hood refers to those hoods that remove grease particles from the air (sometimes referred to as "Grease Hoods") and a Type II hoods refers to those hoods that remove heat and steam from the air (sometimes referred to as "Condensate Hoods" and/or "Heat Hoods");
- e. Liquor license limited to beer and wine sales only; and
- f. No more than two (2) eating and drinking tenants may hold valid zoning use permits for, nor operate within the designated eating and drinking areas on, the Property at the same time.

9. Office

Dental/Medical Office or Clinic  
All other

10. Retail Sales, Service & Repair

Food sales  
Retail sales (Outdoor)  
Retail Sales

11. Communications and Telecom

Antennas Not Attached to a Tower

12. Manufacturing and Production

Custom, excluding any Custom Manufacturing, Fabrication & Assembly that involve alcohol production, including, but not limited to, the following SIC groups: 2082 Malt beverage manufacturing; 2084 wines, brand and brandy spirits manufacturing; and 2085 distilled and blended liquors manufacturing

13. Agriculture

Urban Garden  
Plant Nursery

14. Accessory to all Primary Residential Uses

D. Eating and Drinking Establishment Allowed Uses (as described in this Covenant)

may only operate on the Property between 7:00 a.m. to 8:00 p.m.; all other nonresidential Allowed Uses involving public access may only operate on the Property between 7:00 a.m. to 9:00 p.m., provided, however, that nothing in this Section shall prevent nonresidential tenants or their employees from accessing the Property outside the above stated hours for the purpose of performing business activities or duties that do not require access to the Property by the general public. For the avoidance of doubt, public access shall not include holding internal company meetings, conducting phone calls with clients, holding annual company holiday parties, or other similar private business activities.

E. Any liquor licenses associated with the Property must be limited to a beer and wine liquor license only.

F. So long as the uses of the Property are only one or more Approved Uses, the Company Parties shall have the sole right, in their discretion, to determine: (1) what specific uses shall be made of the Property, whether by the Company Parties, or any individuals or entities who occupy any of the Property as the result of any lease, license, sublease, sublicense, or in any other capacity, e.g., guest, invitee, or otherwise (which are referred to individually as an "Occupant" or collectively as the "Occupants"); (2) what amount of space on the Property or at the Building that each Occupant has at the Property or at the Building; (3) the rent or other consideration that any Occupant of the Property pays to use or occupy any of the Property; (4) whether a user or Occupant of the Property can use or occupy the Property at no charge; (5) the terms that apply to any user or Occupant of the Property; and (6) all other matters that pertain to the Property or uses at the Property.

G. WHNA shall not file any lawsuit against any of the Company Parties or any potential, prospective, or actual user or Occupant of any or all of the Property that attempts to limit or restrict any use or occupancy of the Property, so long as the potential prospective, or actual use or occupancy of the Property is an Approved Use. Company shall have the right to present this Covenant to any court of competent jurisdiction to evidence that such lawsuit cannot be maintained, and to obtain summary dismissal of that case.

H. The Company Parties shall have the right to renovate, reconstruct, or develop the Property in any manner that he, it, or they (as may be applicable) desires, so long as such Construction complies with this Covenant.

I. The restriction contained in this Covenant shall run with the land and shall be binding on the Company Parties and Property and all successor owners of the Property for the benefit of WHNA. No other person or entity, including but not limited to: (1) any individual members of WHNA; or (2) any successors, assigns, subsidiaries, or associated entities of WHNA, shall be an intended beneficiary or incidental beneficiary of any of the benefits of this Covenant. The benefits to WHNA as set forth in this Covenant cannot be sold, gifted, assigned, or otherwise transferred by WHNA. Any attempted sale, gift, assignment, or other transfer of this Covenant shall automatically be void, shall not be recognized by the Company Parties.

J. Unless earlier terminated in any manner set forth in this Covenant, this Covenant shall automatically terminate on the earliest of the following dates: (1) the date that is thirty-five (35) years after the Effective Date; or (2) upon the dissolution, disbanding, or cessation of existence of WHNA. At any time after the termination of this Covenant, any of the Company Parties may request that WHNA execute and deliver a written termination and release of this Covenant, in recordable form. WHNA shall, within fifteen (15) days of the date of such request, execute and deliver to the requesting Company Party such written termination and release. Additionally, in the event of termination of this Covenant as a result of any action or event other than as set forth in Section II.I above, the appropriate Company Party may itself record a written termination and release of this Covenant, which shall be valid and binding in all instances.

K. Miscellaneous.

1. Modification. Any modification of this Covenant must be in writing and signed by all WHNA and the applicable Company Party.
2. Merger. This Covenant constitutes the entire agreement between WHNA and Company, and supersedes all prior oral or written communications, discussions, representations, and statements.
3. Paragraph Headings. Paragraph headings in this Covenant are for reference purposes only and do not affect the interpretation of this Covenant.
4. Applicable Law and Venue. This Covenant shall be governed by the substantive and procedural laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in a state court of competent jurisdiction in Denver County, Colorado. **All Parties knowingly and voluntarily waive their right to a trial by jury in any lawsuit that relates to or arises from this Covenant.**
5. Notice. Any notice under this Covenant shall be in writing, and shall be deemed received (a) upon hand-delivery to the other Party or (b) on the next business day following mailing by UPS or FedEx for next day business delivery, to the address of each Party as set forth below:

**West Highland Neighborhood Association:**

Via email: [info@westhighlandneighborhood.org](mailto:info@westhighlandneighborhood.org)

With a Copy to:

West Highland Neighborhood Association  
c/o Denver City Councilmember District 1  
1437 Bannock Street, Room 451  
Denver, CO 80202

**Company:**

Via email: [paul@thinkgenerator.com](mailto:paul@thinkgenerator.com)

**Address:**

Paul Tamburello  
3222 N. Tejon Street  
Denver, CO 80211

A Party can change its address for the delivery of notices by providing the other Party notice in the manner set forth in this subparagraph.

6. It is hereby disclosed that Paul Tamburello, who is a principal in Company, is a licensed real estate broker in the State of Colorado.

*[Signature page follows]*

3401 W. 29<sup>th</sup> Ave., LLC

By: Paul Tamburello, Manager

West Highland Neighborhood Association

By: President

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

Subscribed and sworn to before me on January 25 2023, by Paul Tamburello, Manager of 3401 W. 29<sup>th</sup> Ave., LLC

SEAL  
TRICIA WHITAKER  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20154017314  
My Commission Expires 5/29/2023

[Signature]  
Notary Public  
My commission expires: 5/29/23

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

Subscribed and sworn to before me on February 9, 2023, by Trevor Breco, as President of West Highland Neighborhood Association

SEAL  
SARAH ELIZABETH VAN HORN  
Notary Public  
State of Colorado  
Notary ID # 20184045897  
My Commission Expires 11/29/2026

[Signature]  
Notary Public  
My commission expires: 11/29/2026

**EXHIBIT A**  
(Legal Description of the Property)

**LOTS 44 TO 48, BLOCK 7, KOUNTZE HEIGHTS, CITY AND COUNTY OF DENVER, STATE OF COLORADO.**

REAR VIEW  
SARAH ELIZABETH WARD  
1000 1/2 1st St  
DENVER, CO 80202

SARAH ELIZABETH WARD  
1000 1/2 1st St  
DENVER, CO 80202