

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “**Agreement**”) is made as of \_\_\_\_\_, 2017 (the “**Effective Date**”), by and between VILLAROSSO RESIDENCES AT DTC WEST CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation (the “**VillaRosso Association**”) and FLATS AT VILLAROSSO, LLC, a Colorado limited liability company (the “**Flats Developer**”). The VillaRosso Association and the Flats Developer are sometimes collectively referred to herein as the “**Parties**” or individually as a “**Party**.”

### RECITALS

A. VillaRosso Residences at DTC West (the “**VillaRosso Condominium**”) is a 65-unit condominiumized multi-family residential building located at 4875 South Monaco Street in the City and County of Denver, Colorado (the “**City**”) upon that certain parcel of real property described on Exhibit A attached hereto and made a part hereof (the “**VillaRosso Property**”). The various owners of the condominium units (the “**Condo Owners**”) that comprise the VillaRosso Condominium, collectively, own the VillaRosso Property. The VillaRosso Association is the owner’s association for the Condo Owners and the purpose of the VillaRosso Association, acting through the Board of Directors of the VillaRosso Association (the “**Board**”), is to manage the business and affairs of the VillaRosso Association. The VillaRosso Condominium and the VillaRosso Property were condominiumized pursuant to that certain Condominium Declaration of VillaRosso Residences at DTC West Condominiums, recorded September 7, 2000 in the real property records of the City and County of Denver, Colorado at Reception No. 2000129024 (as amended, defined herein as the “**VillaRosso Declaration**”).

B. The Flats Developer is the owner of that certain real property in the City more fully described on Exhibit B attached hereto (the “**Flats Property**”). The Flats Property is located immediately adjacent to the VillaRosso Property. The VillaRosso Property and the Flats Property are sometimes referred to collectively herein as the “**Properties**,” and individually as a “**Property**.”

C. The Flats Developer desires to construct on the Flats Property an approximately twenty-nine unit multi-family residential condominium project with associated improvements, including but not limited to vehicular parking, pedestrian walkways, and landscaping (the “**Flats Project**”). Detailed plans and specifications for the Flats Project are attached hereto as Exhibit C (the “**Project Plans**”).

D. The Parties have agreed to establish certain rights and responsibilities for the mutual benefit of themselves and their successors in title to their Properties, as provided in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties represent and agree as follows:

1. Recitals. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. Authority. Each Party represents to the other Party that it has taken all requisite corporate action as may be required for such Party to enter into this Agreement. Without limiting the generality of the foregoing, the Parties acknowledge that Section 6.6(g) of the VillaRosso Declaration grants the Board the authority to enter into, *inter alia*, contracts, agreements, and easements for the use by, *inter alia*, other real property owners, of the VillaRosso Property and/or the Common Elements. Whether the Board determines to solicit input from or approval of the members of the VillaRosso Association before entering into this Agreement is an issue for determination by the Board in its sole discretion.

3. Easement. The VillaRosso Association hereby grants to the Flats Developer, for the benefit of the Flats Developer, its successors, assigns, agents, employees, contractors, subcontractors, architects, engineers, lenders and other construction consultants (collectively, “**Permittees**”), an irrevocable (only for the Term of this Agreement), non-exclusive, temporary construction easement (the “**Easement**”) on and over that certain portion of the VillaRosso Property as depicted on Exhibit D attached hereto and made a part hereof (the “**Project Easement Area**”) for the construction of the Flats Project (the “**Work**”). Without limitation, the term “**Work**” shall include but not be limited to any staging, grading, excavation, earthwork, building construction, framing, paving, planting, landscaping, and all other construction activities.

4. Term. The term of the Easement (the “**Term**”) will commence on the Effective Date, and will automatically terminate and cease to be of any further force or effect upon the completion of the Work (including without limitation the completion of any repair and reconstruction as contemplated in “Repair of Damage” in Paragraph 7(h) hereof); provided, however, that all such Work shall be completed within fifteen (15) months from the Effective Date.

5. Work and Mechanic’s Liens.

(a) Work. The Flats Developer shall cause the Work to be completed (i) in strict accordance with the Project Plans, as the same may be amended by the Flats Developer, in its sole discretion only as to amendments with respect to developments that only impact the Flats Property, from time to time, and (ii) in a good and workmanlike manner, in material conformity with good engineering and building practices and all applicable laws, rules, codes, regulations, ordinances and statutes, and in a manner that prevents: (1) physical damage to the improvements on the VillaRosso Property including without limitation curbs, gutters, sidewalks, parking areas, and the VillaRosso Condominium building; (2) impairment of subjacent or lateral support for the VillaRosso Property and the VillaRosso Condominium; (3) impairment of the normal function of any utilities located on or serving the VillaRosso Condominium; and (4) physical damage to personal property located on the VillaRosso Property, including without limitation any vehicles parked or used on the VillaRosso Property. Notwithstanding (3) above, the Parties acknowledge that the Flats Project will require improvements to, or the relocation of, existing water and sanitary sewer lines, however, the Flats Developer shall minimize, to the maximum extent possible, any disruption in water and/or sanitary sewer service to the VillaRosso Condominium, and shall notify the VillaRosso Association in writing at least

ten (10) days prior to any potential disruption in water and/or sanitary sewer service to the VillaRosso Condominium. Any amendments to the Project Plans that impact the VillaRosso Association or the Condo Owners (including visual impact) must be approved in advance by the VillaRosso Association.

(b) Lien Releases. The Flats Developer will not cause or permit any mechanic's lien claims against the VillaRosso Property or the VillaRosso Condominium to arise from the Work. If any such mechanic's lien claim is recorded, then the Flats Developer will, within 30 days after the recording of such claim, obtain the release of the VillaRosso Property from such claim, whether by discharge, bonding over in accordance with Section 38-22-131, C.R.S., as amended, or otherwise. So long as the foregoing release is obtained, the Flats Developer may contest any mechanic's lien in good faith. If the Flats Developer fails to obtain the release within such 30-day period, then the VillaRosso Association may, at its option, obtain the release, in which case the Flats Developer will, within 15 days after notice of demand, reimburse the VillaRosso Association for the VillaRosso Association's actual out-of-pocket expenses incurred in obtaining the release, including, without limitation, reasonable attorneys' fees and salaries of the VillaRosso Association employees or consultants who may devote time to such issues.

(c) Mitigation of Impacts. The Flats Developer will ensure that access to the VillaRosso Condominium is available at all times (24 hours a day, seven days a week) while the Flats Developer performs the Work and will use commercially reasonable efforts to mitigate impacts to the VillaRosso Association, the Condo Owners, and to tenants and other occupants of the VillaRosso Property, together with the employees, agents, contractors, invitees and licensees of (i) the VillaRosso Association, (ii) the Condo Owners, and (iii) such tenants and other occupants. If at any time, water, sanitary sewer, gas, electric, telecommunication or other utility service is disrupted, without prior notice to VillaRosso Association as provided in Section 5(a) above, or, in any event and regardless of whether prior notice has been provided, for longer than one (1) hour, the Flats Developer will pay the VillaRosso Association liquidated damages (which are not a penalty) of \$1,000.00 per hour (or portion thereof) for each such utility interruption ("Utility Damages"). The Flats Developer will make such payment within fifteen days of having received an invoice for such liquidated damages from the VillaRosso Association.

6. Construction Logistics Plan. The Flats Developer shall deliver to the VillaRosso Association copies of the logistics plan and all documents approved by all governmental entities with jurisdiction over the Flats Project, including without limitation the Denver Technological Center Architectural Control Committee (the "DTC") (collectively, the "**Logistics Plan**") concurrently with the mutual execution of this Agreement. The Logistics Plan shall, at a minimum, contain information detailing how the Work will conform with the items referenced in Section 5(a) above and 7 below.

7. Limitations on Construction Activity. The Flats Developer shall cause the Work to be performed in strict compliance with the following provisions:

(a) Hours of Operation. No Work may be performed before 7:00 a.m. Mountain Time or after 5:00 p.m. Mountain Time on any day of the week (not including

Saturday, when work cannot commence before 8:00 a.m. and must be completed by 5:00 p.m., Mountain Time). No Work may be performed on any Sunday, or on any of the following holidays: New Year's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, or Christmas ("**Excluded Days**") without the prior written consent of the VillaRosso Association.

(b) Access. The Flats Developer shall, during the course of the Work, cause the VillaRosso Association, the Condo Owners and their respective Permittees (as such term is defined in the VillaRosso Declaration) to have clear vehicular and pedestrian access to the VillaRosso Property and the VillaRosso Condominium. The Flats Developer shall use its best efforts to minimize the duration and extent of any temporary blockages of driveways and/or vehicular parking areas, and to the extent feasible, shall notify the VillaRosso Association of any planned closures or blockages of access routes.

(c) Parking. The Project Easement Area does not encumber any portion of the VillaRosso Property, except as specifically provided in Exhibit D. The Flats Developer will not occupy any portion of the VillaRosso Property during construction of the Flats Property. No work (including but not limited to Work as defined herein) on the Flats Property will impact any other portion of the VillaRosso Property, including (but not limited to) full use of the visitor parking spaces within the VillaRosso Property. If use of any portion of the VillaRosso Property is expected to be necessary, the Flats Developer may contact the VillaRosso Association and negotiate appropriate compensation for such use, which may be agreed to by the VillaRosso Association in its sole discretion. Upon the sale of any unit within the Flats Property, the Flats Developer shall furnish, and shall cause the condominium association for the Flats Project ("**Flats Association**") to furnish, to the purchaser of such unit a notice informing such purchaser that the vehicular parking spaces located within the VillaRosso Property are for the sole and exclusive use of the VillaRosso Association, and the Condo Owners and their Permittees (as such term is defined in the VillaRosso Declaration), and that the Flats Developer and its Permittees, the Flats Association, and the unit owner(s) of the Flats Project and their tenants, guests, licensees, invitees, agents, employees, customers and contractors, shall have no rights to use such vehicular parking spaces for any purpose whatsoever. Notwithstanding the foregoing, it is understood that, during the Term, certain visitor parking spaces located on the VillaRosso Property (not exceeding six spaces in the west lot and not exceeding three spaces in the northwest lot) may be affected by the Work for short periods of time, however, the Flats Developer will use commercially reasonable efforts to minimize such disruptions and will give the VillaRosso Association at least one-week's notice and the planned duration for any and all times this is needed.

(d) Fencing Requirements. Any areas of active Work shall be adequately fenced from the VillaRosso Property and/or VillaRosso Condominium with construction fencing of no less than six (6) feet in height and containing opaque screening. No portion of the fencing will be on the VillaRosso Property.

(e) Storage. No materials, equipment, vehicles, or other property associated with the Work shall be stored on the VillaRosso Property, and all such materials shall be stored on the Flats Property or elsewhere in a safe manner.

(f) Dust Mitigation. The Flats Developer shall comply with all City requirements pertaining to mitigation of fugitive dust as a result of the Work. The Flats Developer shall, at a minimum, be required to sprinkle any areas of active construction from time to time as required to avoid excessive transmission of dust particles from the Flats Property to the VillaRosso Property during the Term and will engage in daily cleanup. The Flats Developer shall, at the completion of the Work and at one other time during construction as may be requested by the VillaRosso Association, clean the western and southern outside of the VillaRosso Condominium to remove dust, dirt, and debris created by the construction. In completing all such Work, the Flats Developer will mitigate any cleanliness issues and cooperate with the VillaRosso Association and any contractor that the VillaRosso Association may hire to observe and approve such Work.

(g) Cleanup. During the course of the Work, the Flats Developer shall use its best efforts to maintain the Project Easement Area free and clear of materials, rubbish, dirt, and debris and will cause its contractors to do likewise.

(h) Repair of Damage. Following completion of the Work, the Flats Developer shall reconstruct or repair any improvements located on the VillaRosso Property which have been damaged as a result of construction activity to a substantially the same or better condition than the condition of such improvements prior to such damage. Notwithstanding the generality of the foregoing sentence, the Flats Developer shall be required, at its own expense, to reconstruct the driveway located within the Project Easement Area or other VillaRosso Property following the completion of the Work, and shall additionally be required to reconstruct the driveway island located at the driveway entrance to the VillaRosso Property from South Monaco Street (such reconstruction of the driveway and driveway island to be completed within three months following the completion of the Work and such reconstruction shall meet all standards then applicable to such driveways and driveway islands). In completing all such Work, the Flats Developer will cooperate with the VillaRosso Association and any contractor that the VillaRosso Association may hire to observe and approve such Work. All such repair and reconstruction Work under this Paragraph 7(h) must be completed to the reasonable satisfaction of the VillaRosso Association. To the extent warranties are available for such repair and reconstruction Work, the Flats Developer will obtain warranties in the name of the VillaRosso Association.

(i) Temporary Power Supply. The Flats Developer will provide its own power and other utilities necessary for the Work. The Flats Developer will not use any utilities of the VillaRosso Association and further will assure that the Flats Developer's use of utilities for the Work will not impact the VillaRosso Association or the VillaRosso Property.

(j) Project Communications. The Flats Developer shall keep the VillaRosso Association regularly informed about the status of the Work. Prior to the commencement of the Work, the Flats Developer shall provide the VillaRosso Association with phone number(s) and email address(es) at which the VillaRosso Association can reach the Flats Developer in the event of an emergency or other event which requires the immediate attention of the Flats Developer.

8. Non-Exclusive. The Easement will be non-exclusive, and the Parties expressly reserve the right to the use, enjoyment and occupancy of the surface of and all other portions of their Properties for any and all purposes that are not inconsistent with the terms of this Agreement and the rights and interests afforded to the Parties under the terms hereof.

9. Insurance. During the Term, the Flats Developer shall maintain, and shall cause its Permittees responsible for performing the Work to maintain, commercial general liability insurance insuring against claims for death, personal injury, or property damage arising out of the Work. Such liability insurance shall name the VillaRosso Association as an additional insured thereunder and shall be written for aggregate limits of liability (basic coverage and umbrella) of not less than \$ 2,000,000 combined single limit coverage for bodily injury and property damage on an occurrence basis, and each policy providing such liability insurance will name the VillaRosso Association as an additional insured. Throughout the Term, the Flats Developer will also carry, and will require its Permittees responsible for performing the Work to carry, such workers' compensation insurance as may be required by law. All insurance required to be maintained hereunder will provide that the insurer will supply the VillaRosso Association with 30 days prior written notice of any potential lapse, termination or amendment. Upon request, the Flats Developer will provide to the VillaRosso Association proof of insurance, which proof may consist of a certificate of insurance and/or copies of policies.

10. Indemnity. The Flats Developer will indemnify, defend and hold harmless the VillaRosso Association and the officers, directors, members, Condo Owners, agents and employees of the VillaRosso Association (collectively, the "**Indemnified Parties**") from and against any and all claims (including, without limitation, mechanic's lien claims), actions, causes of action, liability, losses, damages, costs and expenses, including without limitation reasonable attorneys' fees and any actual costs and expenses incurred by any such Indemnified Parties, in connection with the breach of this Agreement by the Flats Developer or any other party acting by, through, or under the Flats Developer as well as in connection with any death, personal injury or property damage arising out of the use of the Easement by the Flats Developer or any other party acting by, through, or under the Flats Developer, except to the extent that such death, personal injury or property damage is caused by the negligent or intentional misconduct of such Indemnified Parties.

11. Termination and Abandonment. Upon expiration of the Term: (a) the Easement will terminate; (b) the Flats Developer will have no further right hereunder to use and enjoy the Easement and the Project Easement Area (except, however, that this limitation on the rights of the Flats Developer shall in no way be deemed to constitute any limitation on or otherwise affect any rights of future owners, their invitees, licensees, permittees, agents, and assigns to access the Flats Property), and (c) the Flats Developer will have no further obligation or duty to maintain or repair the Project Easement Area or have any other obligation or liability to the VillaRosso Association with respect to the Flats Project except to the extent that the repair and reconstruction Work contemplated by Section 7(h) are warranted by the Flats Developer. Following expiration of the Term and subject to the Flats Developer's obligations in Paragraphs 7(f), 7(g), and 7(h) and other obligations herein that relate to "after completion of the Work," the Parties are released from all further obligations and duties regarding the Easement and the Work under this Agreement (except for any claims arising from or related to any time period during the Term that have not either been fully adjudicated by a court of competent jurisdiction or otherwise resolved, in writing, by all

pertinent parties), and any Party, upon the request of any other Party, will execute and deliver an instrument confirming that such termination has occurred. Such release is not intended to and shall not be deemed to release any claims against contractors, subcontractors, and any other parties (other than the Flats Developer) that conducted the Work for any defect in the design, supervision, inspection, or construction of the Work.

12. Default and Remedies. If any Party defaults on any obligation under this Agreement, and such default remains uncured for 30 days following delivery of notice from any non-defaulting Party to the defaulting Party (or, if such default cannot reasonably be cured within a 30-day period, an appropriate cure is not commenced and diligently pursued within such 30-day period), then the non-defaulting Party may seek any and all such relief as may be available at law or equity for the default. In the event of any litigation between the Parties relating to this Agreement, the prevailing Party will be entitled to recover its court costs and reasonable attorneys' fees.

13. No Opposition to Flats Project. As a condition of the Parties' entry into this Agreement, the VillaRosso Association agrees not to oppose, through any filing with the City or any court of competent jurisdiction, the City's approval of plans or permits for the Flats Project.

14. Easements Limited. This Agreement does not create or convey any access rights to the Flats Developer or any Permittees of any nature other than as otherwise expressly permitted or contemplated hereunder. The Flats Developer hereby acknowledges and accepts the easement rights granted herein subject to any existing matters of record.

15. Notices. All notices, demands and other communications required or permitted to be given hereunder shall be in writing and any and all such items shall be deemed to have been duly delivered: (a) upon personal delivery; (b) as of 12:00 p.m. on the immediately following business day after deposit for overnight delivery with Federal Express or a similar overnight courier service, addressed as follows; or (c) after transmitting by facsimile or e-mail to the facsimile number or e-mail address set forth below:

VillaRosso Association:

Board of Directors  
VillaRosso Residences at DTC West Condominium Association  
4875 So. Monaco Street  
Denver, CO 80237  
Attn: Charles W. Kellogg, President  
E-mail: cwkellogg@comcast.net

with a copy to:

Burns Figa & Will, P.C.  
6400 South Fiddler's Green Circle, Suite 1000  
Greenwood Village, Colorado 80111  
Attn: Herrick K. Lidstone, Jr.  
E-mail: hklidstone@bfwlaw.com

Flats Developer:

Flats at VillaRosso, LLC  
5750 DTC Parkway, Suite 130  
Greenwood Village, CO 80111  
Attn: David H. Friedman  
E-mail: david@dhfproperties.com

with a copy to:

Ottens Johnson Robinson Neff + Ragonetti, P.C.  
950 Seventeenth Street, Suite 1600  
Denver, Colorado 80202  
Attn: Brian J. Connolly  
E-mail: bconnolly@ottenjohnson.com

Any address, facsimile number or e-mail address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section.

16. Severability. If any term, covenant, condition or provision of this Agreement is, at any time or to any extent, declared invalid or unenforceable, the remainder of this Agreement will not be affected thereby, it being the intent of the Parties that this Agreement and each provision hereof will be enforceable and enforced to the fullest extent permitted by law.

17. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the Easements, and all prior or extrinsic agreements, understandings, or negotiations will be deemed merged herein.

18. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce the terms of this Agreement will be in the District Court for the City and County of Denver.

19. Amendment. The provisions of this Agreement may be modified, rescinded or amended in whole or in part only by a written instrument duly executed by the Parties.

20. No Waiver. No provision of this Agreement may be waived except by written instrument signed by the Party to be charged with such waiver. Failure by any Party to this Agreement to enforce any provision of this Agreement shall not constitute a waiver of such provision, and no waiver by any Party to this Agreement of any provision of this Agreement on one occasion shall constitute a waiver of any other provision or of the same provision on another occasion.

21. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument and agreement. Counterparts may be delivered via facsimile or e-mail and will be effective for purposes of executing this Agreement and any amendment thereto.

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the undersigned have executed and delivered this Temporary Construction Easement Agreement as of the Effective Date.

**VILLAROSSO ASSOCIATION:**

VILLAROSSO RESIDENCES AT DTC WEST  
CONDOMINIUM ASSOCIATION, INC.,  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_ of VillaRosso Residences at DTC West Condominium Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires:

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

**FLATS DEVELOPER:**

FLATS AT VILLAROSSO, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  
David H. Friedman  
Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by David H. Friedman, as Manager of Flats at VillaRosso, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:

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

## EXHIBIT A

### The VillaRosso Property

#### LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE SE 1/4 OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY & COUNTY OF DENVER, STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE S 1/4 CORNER OF SAID SECTION 8;  
THENCE ALONG THE WESTERLY LINE OF THE SE 1/4 OF SAID SECTION 8, N 00°36'09" E A DISTANCE OF 690.15 FEET;  
THENCE CONTINUING ALONG SAID WESTERLY LINE N 00°36'09" E A DISTANCE OF 336.95 FEET;  
THENCE S 89°23'36" E A DISTANCE OF 200.83 FEET TO THE POINT OF BEGINNING;  
THENCE CONTINUING S 89°23'36" E A DISTANCE OF 324.16 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH MONACO STREET;  
THENCE ALONG SAID RIGHT OF WAY LINE, S 17°07'59" W A DISTANCE OF 352.75 FEET;  
THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, ALONG THE ARC OF A CURVE TO THE LEFT 70.70 FEET, HAVING A RADIUS OF 941.47 FEET AND A CENTRAL ANGLE OF 4°18'09";  
THENCE DEPARTING SAID RIGHT OF WAY LINE, ALONG A RADIAL LINE TO THE PREVIOUSLY DESCRIBED CURVE, N 70°10'10" W A DISTANCE OF 27.67 FEET;  
THENCE N 47°37'03" W A DISTANCE OF 121.73 FEET;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT, 33.28 FEET, HAVING A RADIUS OF 45.00 FEET AND A CENTRAL ANGLE OF 42°22'25";  
THENCE N 89°59'28" W A DISTANCE OF 14.96 FEET;  
THENCE S 46°08'20" W A DISTANCE OF 3.80 FEET;  
THENCE N 00°21'32" W A DISTANCE OF 24.65 FEET;  
THENCE N 16°64'00" W A DISTANCE OF 84.93 FEET;  
THENCE N 71°49'29" E A DISTANCE OF 116.96 FEET;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT 5.97 FEET, HAVING A RADIUS OF 4.00 FEET, A CENTRAL ANGLE OF 85°33'49" AND A CHORD DISTANCE AND BEARING OF 5.43 FEET, N 29°02'34" E;  
THENCE N 13°44'20" W A DISTANCE OF 10.12 FEET;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT 8.29 FEET, HAVING A RADIUS OF 9.00 FEET, A CENTRAL ANGLE OF 52°46'30" AND A CHORD DISTANCE AND BEARING OF 8.00 FEET, N 40°07'35" W;  
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT 87.85 FEET, HAVING A RADIUS OF 33.85 FEET A CENTRAL ANGLE OF 148°41'45" AND A CHORD DISTANCE AND BEARING OF 65.19 FEET, N 10°17'23" E;  
THENCE ALONG THE ARC OF A CURVE TO THE LEFT 8.01 FEET, HAVING A RADIUS OF 8.26 FEET, A CENTRAL ANGLE OF 55°35'20" AND A CHORD DISTANCE AND BEARING OF 7.70 FEET, N 62°48'51" E;  
THENCE N 37°45'24" E A DISTANCE OF 29.87 FEET;  
THENCE N 00°42'31" E A DISTANCE OF 14.12 FEET;  
THENCE N 89°17'29" W A DISTANCE OF 61.30 FEET;  
THENCE N 00°36'09" E A DISTANCE OF 73.37 FEET TO THE POINT OF BEGINNING;  
CONTAINING 87,558 SQUARE FEET OR 2.01 ACRES, MORE OR LESS.

## **EXHIBIT B**

### **The Flats Property Legal Description**

A parcel of land being part of Lot 1, Block 2, [The 165 Subdivision Filing No. 1](#), as recorded in Plat Book 29 at Page 86 in The City and County of Denver's Clerk and Recorder's office, said parcel being located in the Southeast ¼ of Section 8, Township 5 South, Range 67 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

The basis of bearing for this description is the West line of the SE ¼ of Section 8, Township 5 South, Range 67 West, being N 00°36'09" E between the found monuments shown and described hereon:

Commencing at the South ¼ corner of said Section 8;

Thence N 00°36'09" E, along West line of the Southeast ¼ of said Section 8, a distance of 690.15 feet to the Point of Beginning;

Thence continuing along the West line of said Southeast ¼ an additional distance of 336.95 feet; thence S 89°23'36" E. a distance of 524.99 feet to a point, said point also being on the West right-of-way line of South Monaco Street;

Thence the following two (2) courses along said right-of-way line;

1. Thence South 17°07'59" West, a distance of 352.75 feet to a point of curvature;
2. Thence along a curve to the left, having a radius of 941.47 feet, a central angle of 04°18'09" and an arc distance of 70.70 feet;

Thence along a radial line N 77°10'10" W, a distance of 27.67 feet; thence North 47°37'03" W, a distance of 121.73 feet to a point of curvature; thence along a curve to the left, having a radius of 45.00 feet, a central angle of 42°22'25", an arc distance of 33.28 feet to a point of tangent; thence N 89°59'28" W, a distance of 14.96 feet; thence S 46°08'20" W, a distance of 37.51 feet; thence N 89°59'28" W, a distance of 217.08 feet to the Point of Beginning;

EXCEPTING THEREFROM that parcel described as a Condominium Map of Villarosso Residences at DTC West, recorded September 7, 2000, under [Reception No. 200129025](#), City and County of Denver, State of Colorado.

The above parcel is also described as follows:

A parcel of land being part of Lot 1, Block 2, The 165 Subdivision Filing No. 1, as recorded in the Plat Book 29 at Page 86 in the City of Denver's Clerk and Recorder's office, said parcel also being a portion of The Villarosso LLC Property recorded in said Denver Clerk and Recorder's office at Reception No. 9900117806, said parcel located in the Southeast ¼ of Section 8, Township 5 South, Range 67 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Commencing at the South ¼ corner of said Section 8; thence N 00°36'09" E, along the West line of the Southeast ¼ of Section 8, a distance of 690.15 feet to the Point of Beginning; thence N 00°36'09" E

continuing along said

West line, a distance of 336.95 feet; thence S 89°23'36" E, a distance of 200.83 feet to the Northwest corner of Villarosso Residences at DTC West, as recorded at [Reception No. 20000129025](#) of said Denver County records Thence along the Westerly boundary lines of said Villarosso Residences at DTC West the following twelve (12) courses:

1. S 00°36'09" W, a distance of 73.37 feet;
2. S 89°17'29" E, a distance of 61.30 feet;
3. S 00°42'31" W, a distance of 14.12 feet;
4. S 37°45'24" W, a distance of 29.87 feet to a point of curvature to the right;
5. Along said curve to the right, having a central angle of 55°33'20", radius of 8.26 feet, a chord distance of 7.70 feet, a chord bearing of S 62°48'51" W for an arc length of 8.01 feet to a point of reverse curvature to the left;
6. Along said reverse curve to the left, having a central angle of 148°41'45", a radius of 33.85 feet, a chord distance of 65.19 feet, a chord bearing of S 10°17'23" W, for an arc length of 87.85 feet to a point of reverse curvature to the right;
7. Along said reverse curve to the right, having a central angle of 52°46'30", a radius of 9.00 feet, a chord distance of 8.00 feet, a chord bearing of S 40°07'35" E for an arc length of 8.29 feet to a point of tangency;
8. S 13°44'20" E, a distance of 10.12 feet to a point of curvature to the right;
9. Along said curve to the right, having a central angle of 85°33'49", a radius of 4.00 feet, a chord distance of 5.43 feet, a chord bearing of S 29°02'34" W for an arc length of 5.97 feet to a point of tangency;
10. S 71°49'29" W, a distance of 16.96 feet;
11. S 16°46'00" E, a distance of 84.93 feet;
12. S 00°21'32" E, a distance of 24.65 feet to the Southwest corner of said Villarosso Residences at DTC West;

Thence S 46°08'20" W, a distance of 33.71 feet; thence N 89°59'28" W, 217.08 feet to the Point of Beginning

## **EXHIBIT C**

### **Project Plans**

[to be attached]

*Exhibit C is to include the following agreements offered by Mr. Friedman in his letter of September 12, 2017:*

1. **Annexation.** Without agreeing that the Flats has any right to annex into the VillaRosso Phase One HOA to form one HOA, the Flats and any other person allegedly with rights under the VillaRosso Condominium Declaration will waive such rights.
2. **Flats Building Design.** Agreed as stated therein.
3. **Visitor Parking.** Agreed as stated in (i)(ii)(iii)(iv) therein and in paragraph 7(c) of the Temporary Construction Easement.
4. **Visitor Parking Lighting.** Agreed as stated therein.
5. **Construction Hours of Operation.** Agreed as stated in paragraph 7(a) of the Temporary Construction Easement.
6. **Construction Fence and Screening.** Agreed as stated in paragraph 7(d) of the Temporary Construction Easement.
7. **Portable Toilets.** Agreed as stated therein.
8. **Interruption of Utilities.** Agreed as stated in paragraph 5(c) of the Temporary Construction Easement.
9. **Damage.** Agreed as stated in paragraph 7(h) of the Temporary Construction Easement.
10. **Daily Cleanup.** Agreed as stated in paragraphs 7(f) and 7(g) of the Temporary Construction Easement.
11. **Temporary Power.** Agreed as stated in paragraph 7(i) of the Temporary Construction Easement.
12. **Construction Storage and/or Parking.** Agreed as stated in paragraphs 7(b), 7(c) and 7(e) of the Temporary Construction Easement.
13. **Rear Door and Signage.** Install rear entry/exit door on the west side of the Flats to further encourage use of the west visitor parking, and provide new mutually agreed upon project identification signage.

**All other matters are as set forth in the Temporary Construction Easement.**

**EXHIBIT D**

**Project Easement Area**

[to be attached]

**Exhibit D will only include (a) the access from South Monaco Street to the Flats construction via that portion of the private drive owned by the Condo Owners and (b) up to six parking spaces as set forth in paragraph 7(c) of the Temporary Construction Easement and will include no other portion of the parking area or any other portion of VillaRosso Property except the destruction and reconstruction of the island.**