



07/10/2015 09:04 AM  
City & County of Denver  
Electronically Recorded

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D \$0.00

When Recorded Return To:  
McGeady Sisneros, P.C.  
450 E. 17<sup>th</sup> Ave., Suite 400  
Denver, Colorado 80203  
Attn: MaryAnn M. McGeady

**E-RECORDED**  
THIS DOCUMENT WAS RECORDED \_\_\_\_\_

## DECLARATION OF RESTRICTIONS AND COVENANTS

THIS DECLARATION OF RESTRICTIONS AND COVENANTS (this "**Declaration**") is made as of July 9, 2015, at 7:00 A.M. local time in Denver, Colorado ("**Effective Time**"), by **DIBC COMMERCIAL, LLC**, a Colorado limited liability company ("**Declarant**"), for the benefit of **DENVER INTERNATIONAL BUSINESS CENTER METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado, its successors and/or assigns (the "**District**").

### RECITALS

A. All capitalized terms used, but not defined, in these Recitals shall have the meanings provided in Section 1 below.

B. As of the Effective Time, Declarant owns the fee interest in the real property described in **Exhibit A**, attached hereto (the "**Property**"), which is located in the City and County of Denver, Colorado ("**City**").

C. The District has been organized pursuant to Colorado law to finance, construct, complete, operate, maintain, repair, replace and provide public improvements and services within or without its boundaries, including, without limitation, sanitation, water, streets, safety and protection, park and recreation, transportation, television relay and translation and mosquito control improvements, facilities and services (collectively, the "**Public Improvements**").

D. The District has the authority, under the laws of the State, its service plan, and its electoral authorization, to issue Bonds for the purpose of, among other things, financing (or refinancing) the costs of the Public Improvements.

E. The Property and all improvements thereon will benefit directly from the construction, existence, financing, operation, maintenance, repair, replacement and provision of the Public Improvements; however the Property is outside the boundaries of the District and not subject to the mill levy imposed by the District that provides the property taxes for payment of the costs of the Public Improvements.

F. As an alternative to inclusion within the District's boundaries and subject to and in accordance with the terms of this Declaration, Declarant desires to impose upon the Property the restrictions and covenants set forth below to ensure the Property contributes fairly to the payment of the costs of the Public Improvements by payment of the Annual Fee.

## DECLARATION

NOW THEREFORE, for and in consideration of the foregoing, Declarant declares as follows:

1. Defined Terms. Except as otherwise expressly provided herein or unless the context requires otherwise, the singular of any term includes the plural of such term, and any reference herein to a Section is to a Section of this Declaration. The following terms, when used in this Declaration, shall have the following meanings:

(a) “**Annual Fee**” means an annual payment in lieu of taxes in an amount calculated as follows:

(i) For any calendar year in which the Owners of the Property operate at least two (2) flight simulators for at least eight (8) months each on the Property (or any number of flight simulators operated for at least sixteen (16) months in the aggregate), an amount equal to the revenue that would be derived from the District’s imposition of its debt service and operating mill levies on the taxable real property within the Property, based on the District’s most recently certified mill levies and the Denver County Assessor’s (the “Assessor’s”) most recently certified final assessed value of such taxable real property.

(ii) For any calendar year in which the Owners of the Property operate at least one (1) but fewer than two (2) flight simulators for at least eight (8) months on the Property (or any number of flight simulators operated for at least eight (8) months in the aggregate), an amount equal to the sum of (A) revenue that would be derived from the District’s imposition of its debt service and operating mill levies on the taxable real property within the Property, plus (B) one-fifth (1/5<sup>th</sup>) the revenue that would be derived from the District’s imposition of its debt service and operating mill levies on the taxable personal property within the Property, based on the District’s most recently certified mill levies and the Assessor’s most recently certified final assessed value of such taxable real and personal property; and

(iii) For any calendar year in which the Owners of the Property fail to operate at least one (1) flight simulator for at least eight (8) months on the Property (or any number of flight simulators operated for at least eight (8) months in the aggregate), an amount equal to the revenue that would be derived from the District’s imposition of its debt service and operating mill levies on the taxable real and personal property within the Property, based on the District’s most recently certified mill levies and the Assessor’s most recently certified assessed value of such taxable real and personal property.

(b) “**Bond Documents**” means, collectively, the resolutions, indentures, reimbursement agreements, loan agreements or other contracts under which the District issues one or more series of Bonds for the purpose of financing or refinancing the Public Improvements.

(c) “**Bonds**” means, collectively, one or more series of bonds, notes or other obligations issued under the Bond Documents by the District, for the purpose of financing or refinancing the Public Improvements and includes the District’s \$12,465,000 General Obligation Refunding Bonds, Series 2010.

(d) **“Effective Time”** means July 9, 2015, at 7:00 A.M. local time in Denver, Colorado.

(e) **“Interest”** means any and all partial or total legal right to property or for the use of property, including a fee interest, leasehold or other right to use, possess or occupy.

(f) **“Owner(s)”** means a Person that has an Interest in any portion of the Property, whether by contract or otherwise, including without limitation the Declarant and any of its respective successors and assigns, which Person has the legal obligation to pay property taxes imposed on the Property. If more than one Person owns an Interest in a particular portion of the Property and the legal obligation to pay property tax and is allocated among such Persons, for purposes of this Declaration, such Persons shall be jointly and severally liable for the payments required under this Declaration.

(g) **“Person(s)”** means an individual, firm, corporation, partnership, company, association, joint stock company, trust, body politic or any other incorporated or unincorporated organization or any trustee, receiver, assignee, or other similar representative thereof.

(h) **“State”** means the State of Colorado.

2. No Common Interest Community/CCIOA Does Not Apply.

(a) This Declaration does not create a “condominium” or a “cooperative” as such terms are defined by the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et. seq, (the “Act”).

(b) Declarant does not intend that this Declaration to create, nor does Declarant believe that this Declaration creates, a “planned community” (as such term is defined by the Act).

(c) Whether or not this Declaration creates a planned community, Declarant hereby restricts the Property and any and all “units” (as such term is defined by the Act) to nonresidential use, and exclusively nonresidential use, as contemplated by Section 121 of the Act.

(d) As such, the Act does not apply to the Property or any planned community that may be created hereby and this Declaration shall be read, construed and interpreted accordingly.

3. Annual Fee.

(a) Declarant acknowledges and agrees that until the Property is included within the District’s boundaries or the District is dissolved, whichever occurs first, the District may and shall impose, and the Owners of the Property shall pay to the District, the Annual Fee in arrears as set forth below.

(i) On or before January 7<sup>th</sup> of the calendar year immediately following the calendar year in which the first temporary certificate of occupancy for any improvement on the Property is issued, and on or before January 7<sup>th</sup> of each year thereafter, the Owners of the Property shall deliver to the District (A) a copy of the annual personal property declaration for the Property

the Owners filed with the Assessor for the preceding calendar year, and (B) the Owners' written certification of (1) the number of flight simulators the Owners operated on the Property during the preceding calendar year and (2) the number of full months that each such flight simulator was operated during the preceding calendar year, where a "month" equals thirty (30) days.

(ii) On or about January 15<sup>th</sup> of the calendar year following the calendar year in which the first temporary certificate of occupancy for any improvement on the Property is issued, the District shall deliver written notice to the Owners of the Annual Fee due for the calendar year in which such first temporary certificate of occupancy was issued; provided that delinquencies or failures in providing such notice shall not affect the validity or collectability of such Annual Fee. The amount of such Annual Fee shall be pro-rated, based on the date of the issuance of such first temporary certificate of occupancy.

(iii) On or about January 15 of each year thereafter, the District shall deliver written notice to the Owners of the Annual Fee due for the prior calendar year; provided that delinquencies or failures in providing such notice shall not affect the validity or collectability of such Annual Fee.

(iv) Each Annual Fee due for a calendar year shall be due and payable in arrears on March 1 of the following calendar year.

(v) Until paid, each Annual Fee due hereunder shall constitute a perpetual and prior lien of the District and any such lien may be foreclosed in the same manner as provided by the laws of the State for the foreclosure of mortgages. The District may, but is not obligated to, record a statement of lien with respect to any Annual Fee that is not paid when due.

4. Transfers of Interests.

(a) ANY OWNER TRANSFERRING AN INTEREST IN ANY PORTION OF THE PROPERTY SHALL PROVIDE NOTICE OF SUCH TRANSFER TO THE DISTRICT, IN WRITING, IDENTIFYING THE PORTION OF THE PROPERTY BEING TRANSFERRED. SUCH NOTICES SHALL BE DELIVERED TO THE DISTRICT, AT THE ADDRESS SET FORTH BELOW, NOT LATER THAN THE DATE SUCH TRANSFER OF INTEREST IS EFFECTIVE.

To District: Denver International Center Metropolitan District No. 1  
141 Union Blvd., Suite 150  
Lakewood, CO 80228  
Attn: Lisa Johnson  
Telephone: (303) 987-0835  
Email: *ljohnson@sdmsi.com*

With a copy to: McGeady Sisneros, P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Attn: MaryAnn M. McGeady  
Telephone: (303) 592-4380  
Email: [mmcgeady@mcgeadysisneros.com](mailto:mmcgeady@mcgeadysisneros.com)

(b) An Owner's failure to give any such notice of transfer shall in no way affect or eliminate the obligation of a subsequent Owner to pay the Annual Fee.

5. Notices. Notices given with respect to this Agreement shall be by hand-delivery, or by certified mail, return receipt requested, or overnight delivery service by a nationally recognized overnight courier service such as FedEx or UPS. Notice shall be deemed given (i) when received if transmitted by hand-delivery, (ii) on the third (3<sup>rd</sup>) business day if transmitted by certified mail, postage pre-paid, or (iii) the next business day if transmitted by overnight delivery. Notice shall be sent to the following addresses:

To Owners: To the Owners at their addresses at the Property

To the District: Denver International Center Metropolitan District No. 1  
141 Union Blvd., Suite 150  
Lakewood, CO 80228  
Attn: Lisa Johnson

With a copy to: McGeady Sisneros, P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203  
Attn: MaryAnn M. McGeady

6. Enforcement. The District shall have all rights and remedies available to it under this Declaration, at law or in equity to enforce this Declaration against any Person violating or attempting to violate the restrictions and covenants set forth herein. Such right and remedies include, without limitation, the power and authority to enforce this Declaration by proceedings to restrain such violation, compel compliance, foreclose the District's lien and recover damages, costs and expenses.

7. Governing Law and Venue. This Declaration will be governed by, and enforced in accordance with, the laws of the State. Venue for legal proceedings shall be proper in the jurisdiction where the Property is located.

8. Termination. This Declaration shall terminate upon the earlier of the inclusion of the Property within the boundaries of the District or upon dissolution of the District, whichever first occurs.

9. Run with the Land; Reasonableness. This Declaration, as recorded, shall run with the land, and shall be binding upon all Owners and Persons having an Interest in the Property and



their respective successors and assigns. If and to the extent that any of the restrictions or covenants herein would otherwise be unlawful or void for violation of (i) the rule against perpetuities, (ii) the rule restricting restraints on alienation, or (iii) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants may be valid, then the provisions concerned will continue and endure only until the expiration of a period of ninety (90) years after the Effective Date. The covenants set forth herein are reasonable and necessary to the effect the construction, existence, financing, operation, maintenance, repair, replacement and provision of the Public Improvements benefitting the Property, the Owners and Persons having an Interest in the Property. No Owner or other Person having an Interest in the Property may contest the effectiveness or enforceability of this Declaration by any legal proceedings in any forum and Declarant hereby covenants for itself and its successors and assigns that no such Owner or other Person shall do so.

10. Assignment. To the fullest extent permitted by applicable law, any and all of the rights, powers, and reservations of the District herein contained may be assigned (in whole or in part) by the District to any Person by a recorded document executed by both the assignor and the assignee. Upon any such assignment, the assignee shall, to the extent of such assignment, have the same rights and powers as are given to the District herein.

11. Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, will in no way affect any of the other provisions of this Declaration or the application thereof to any other Person or circumstance, and the remainder of this Declaration will remain in effect; provided, however, that in the event such invalidation would render the remaining portions of this Declaration ineffective to carry out the intentions of the Declarant as expressed or implied by this Declaration, then the objectionable provision(s) hereof will be construed, and this Declaration will be presumed amended, as if such provision was replaced with an enforceable provision which effectuates, as nearly as possible, the intent of the Declarant as expressed or implied herein.

12. No Third Party Beneficiary. Except for any and all rights and reservations of Declarant under this Declaration, it is expressly understood and agreed that enforcement of the terms and conditions of this Declaration, and all rights of action relating to such enforcement, shall be strictly reserved to the District, and its duly authorized successors and assigns, and nothing contained in this Declaration shall give or allow any claim or right of action by any other Person with respect to this Declaration. However, if any of the rights, powers, and reservations of the District is assigned, pursuant to Section 10, the assignee shall be considered a third party beneficiary with enforcement rights hereunder as if it were an original party hereto.

13. Amendment by Declarant. Declarant may make amendments to the provisions of this Declaration with the prior written consent of (i) the Owners who hold a fee interest in fifty-one percent (51%) of the total acreage of the Property, (ii) the District, and (iii) such other consents as may be required pursuant to any Bond Documents. Additionally, subject to the prior written consent of the District, Declarant may take the necessary and appropriate action to cause additional real property to be subjected to this Declaration, but only with the prior consent of one hundred percent (100%) of the Persons owning a fee interest in the property proposed to be subjected to this Declaration.

IN WITNESS WHEREOF, the Declarant has made and executed this Declaration as of the date first set forth above.

DIBC COMMERCIAL, LLC,  
a Colorado limited liability company

By: L.C. Fulenwider, Inc.,  
a Colorado corporation, Manager

By: [Signature]  
L.C. Fulenwider III, President

FULLY'S III, INC.,  
a Colorado corporation, Manager

By: [Signature]  
L.C. Fulenwider III, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

This instrument was acknowledged before me this 9 day of July, 2015, by L.C. Fulenwider III, as President of L.C. Fulenwider, Inc. a Colorado corporation, as Manager of DIBC Commercial, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 3/23/2018

**MARLEEN ZIEGLER**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 20104008566**  
**MY COMMISSION EXPIRES 03/23/2018**

[Signature]  
Notary Public

\_\_\_\_\_  
(SEAL)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

This instrument was acknowledged before me this 9 day of July 2015, by L.C. Fulenwider III, as President of FULLY'S III, INC., a Colorado corporation, as Manager of DIBC Commercial, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 3/23/2018

**MARLEEN ZIEGLER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20104008566  
MY COMMISSION EXPIRES 03/23/2018**

*Marleen Ziegler*  
\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(SEAL)



The District, its successors, and its assigns, are beneficiaries of the restrictions and covenants set forth in this Declaration and the District acknowledges its enforcement rights provided herein.

DENVER INTERNATIONAL BUSINESS  
CENTER METROPOLITAN DISTRICT NO. 1

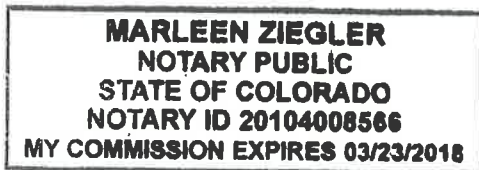
By: Marcia A. Lujan  
Name: Marcia A. Lujan  
Its: Treasurer

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 9 day of July 2015 by MARCIA A. LUJAN, as TREASURER of Denver International Business Center Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado.

Witness my hand and official seal.

My commission expires: 3/23/2018



Marleen Ziegler  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

A PARCEL OF LAND BEING LOCATED IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN. BEING MONUMENTED BY A #5 REBAR AT THE CENTER ¼ CORNER AND A 3-1/4" ALUMINUM CAP STAMPED "LS 27278" AT THE EAST ¼ CORNER, BEARING S89°57'53"E AS REFERENCED TO UTM ZONE 13.

BEGINNING AT THE NORTHWEST CORNER OF DENVER INTERNATIONAL BUSINESS CENTER FILING NO. 6 AS RECORDED UNDER RECEPTION NO. 2006114375 IN THE OFFICES OF THE DENVER COUNTY CLERK AND RECORDER.

THENCE ON THE WESTERLY LINE OF SAID DENVER INTERNATIONAL BUSINESS CENTER FILING NO. 6 ALSO BEING THE WESTERLY LINE OF YAMPA STREET, S00°40'58"W A DISTANCE OF 572.54 FEET, TO A POINT ON THE EXTENSION OF THE NORTHERLY RIGHT-OF-WAY LINE OF 67TH AVE. AS PLATTED IN SAID DENVER INTERNATIONAL BUSINESS CENTER FILING NO. 6;

THENCE ON THE EXTENSION OF SAID NORTHERLY RIGHT-OF-WAY LINE, N89°56'04"W A DISTANCE OF 239.68 FEET, TO A POINT OF CURVE; THENCE THE FOLLOWING FIVE (5) COURSES:

1. ON THE ARC OF A TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 500.00 FEET, A CENTRAL ANGLE OF 45°00'12" AND AN ARC LENGTH OF 392.73 FEET, TO A POINT OF TANGENT;
2. N44°55'52"W A DISTANCE OF 217.97 FEET; ALTA COMMITMENT Old Republic National Title Insurance Company Schedule A Order Number: ABD70437965-7 Customer Ref-Loan No.:
3. N45°04'08"E A DISTANCE OF 105.61 FEET, TO A POINT OF CURVE;
4. ON THE ARC OF A TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 350.00 FEET, A CENTRAL ANGLE OF 36°41'38" AND AN ARC LENGTH OF 224.15 FEET, TO A POINT OF NONTANGENT;
5. ON A LINE BEING 43.50 FEET SOUTHERLY OF AND PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST ¼ OF SAID SECTION 4, S89°57'53"E A DISTANCE OF 580.01 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION PREPARED BY:  
J-R ENGINEERING  
PROJECT NO.: 15500.03  
DATED: 1/15/2015