

# BRIDGE EASEMENT AGREEMENT

THIS BRIDGE EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2015, by and between WESTERN STOCK SHOW ASSOCIATION, a Colorado non-profit corporation (“**WSSA**” or the “**Grantor**”) and the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado (“**RTD**” or the “**Grantee**”).

## WITNESSETH:

For and in consideration of the sum of Ten and no/100 Dollars (\$10.00) paid by the Grantee to the Grantor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

**1. DEFINITIONS.** The following terms shall have the following meanings throughout this Agreement:

A. “**Bridge**” means the bridge, conceptually described and depicted in the plans attached hereto as **Exhibit 1** (the “**Plans**”), that will be constructed by RTD at the Marion Street Site (defined below) on, over and through the Bridge Easement Property (defined below), which will provide access for the construction, operation, maintenance, repair and replacement of RTD’s North Metro Commuter Rail Line (the “**Rail Line**”).

B. “**Bridge Easement Property**” means the air rights over that portion of the Marion Street Site necessary for the construction, operation, maintenance, repair and replacement of the Bridge; the legal description of the Bridge Easement Property is attached hereto as **Exhibit 2** , and is labeled as “Aerial Esm’t” on the included diagram.

C. “**Center Pier**” means the pier necessary for RTD to construct, maintain and support the Bridge; the legal description of the location of the Center Pier is also depicted on **Exhibit 2**, and is labeled as “Surface Easement” on the included diagram .

D. “**Marion Street Site**” means that certain roadway located in the City and County of Denver that is at or near the intersection of Marion Street and East 47<sup>th</sup> Avenue (shown in **Exhibit 3**).

**2. BRIDGE EASEMENT.** WSSA hereby grants and conveys to RTD a perpetual easement to the Bridge Easement Property for any and all activities related to the construction, operation, maintenance, repair and replacement of the Rail Line (the “**Bridge Easement**”). RTD shall have exclusive use of the Bridge Easement from the bottom of the Bridge beam through the Bridge and above that portion of the Bridge reasonably necessary for construction, operation, maintenance, repair and replacement of the Bridge. RTD shall

have non-exclusive use of the Bridge Easement below the Bridge beam, consistent with the terms set forth herein.

**3. CENTER PIER EASEMENT.** WSSA also grants and conveys to RTD a perpetual, exclusive easement for purposes of construction, operation, maintenance, repair and replacement of the Center Pier that will support the Bridge (the “**Center Pier Easement**”). The Bridge Easement and Center Pier Easement shall be collectively referred to herein as the “**Easements**”.

**4. RIGHTS GRANTED TO RTD.** The Easements shall include the right to use the Bridge Easement Property and Center Pier and shall belong to RTD, its successors and assigns, its officers, agents, employees, designees, contractors, guests, and invitees and all those acting by or on behalf of them, pursuant to the following terms:

a. The right for ingress and egress over, under, across, and through the Bridge Easement Property.

b. The right to use the Bridge and to cause such noise, vibration and other effects that are usually caused by a commuter rail train traveling on, across and over a bridge; and

c. The right to construct, operate, maintain, repair and replace the Bridge or Center Pier to allow for the operation of the Rail Line; and

d. The right to enter upon the Bridge Easement Property to construct, operate, maintain, repair and replace the Bridge and Center Pier, or to remove objects that may unreasonably interfere with RTD’s rights herein; and

e. The right to have and exercise the right of subjacent and lateral support to whatever extent is necessary or desirable for the operation and maintenance of the Bridge and of the Center Pier; and

f. The right to assign to any governmental entity or to any public utility provider all rights to use and all obligations associated with the Easements being granted herein; and

g. The right to have and exercise the right and authority to grant temporary construction easements or license agreements to any governmental entity or public utility provider for any purpose authorized herein; and

h. WSSA will not unreasonably interfere with the rights granted to RTD in subparagraphs 4(a) through 4(g) above during RTD’s construction, operation, maintenance, repair and replacement activities; and

i. Notwithstanding any other provision of this Agreement, in order to minimize impact on the National Western Stock Show, except in the case of a bona fide emergency, RTD shall not conduct any construction, operation, maintenance, repair and replacement under the bridge beam on the Bridge Easement Property from December 1

through January 31 of each year without the prior written consent of WSSA.

**5. RTD'S ACCEPTANCE.** RTD hereby agrees to accept WSSA's grant and conveyance of the Easements.

**6. CONSTRUCTION/MAINTENANCE.** All construction, operation, maintenance, repair and replacement work relating to the Bridge or Rail Line, or otherwise conducted by RTD on the Bridge Easement Property shall be completed by RTD, at no expense to WSSA, in a good and workmanlike manner and shall be free and clear of liens and encumbrances. RTD shall keep and maintain in good repair any of its work and property on the Bridge Easement Property and Center Pier. RTD shall give WSSA reasonable written advance notice before commencing repairs.

**7. TOOLS AND EQUIPMENT.** WSSA shall not store any tools, equipment, material or property on the Bridge Easement Property without the prior express written consent of RTD. To the extent that RTD gives any such express prior written consent, all tools, equipment and materials shall be kept or stored at least four feet from the outer rail of any rail track (measured horizontally) or Center Pier in the vicinity of the Bridge Easement Property. WSSA shall not store or use any explosives or other highly flammable substances on the Bridge Easement Property. WSSA specifically assumes all risk of loss, damage, or destruction to any property that it stores on the Bridge Easement Property, whether the loss, damage, or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

**8. ENVIRONMENTAL MATTERS.** Neither party shall use, produce, treat, generate, release, discharge, store, dispose, transport or cause to be transported any hazardous substances at, on, under, over, in or about the Bridge Easement Property or Center Pier. A party shall notify the other party in writing within ten (10) days of its receipt of any notice of a violation of any environmental law or regulation relating to the Bridge Easement property. Such notice shall include a copy of any notice of violation. The term "hazardous substances" shall mean any toxic or hazardous or noxious substance, material or waste that is regulated by any government authority. For purposes of this paragraph 8, the following activities shall not constitute the transport of hazardous materials in or about the Bridge Easement Property or Center Pier: (a) fuel trucks with approximate tank sizes of up to 150 gallons driven through the Bridge Easement Property by or on behalf of WSSA; (b) weed sprayer trucks with approximate tank sizes of up to 250 gallons driven through the Bridge Easement Property by or on behalf of WSSA; and (c) up to 100 pound propane tanks transported through the Bridge Easement Property by or on behalf of WSSA.

**9. WSSA'S USE OF BRIDGE EASEMENT PROPERTY.** WSSA shall retain fee ownership of the Bridge Easement Property and may use it for any purpose not inconsistent with RTD's reasonable enjoyment of RTD's rights set forth in this Agreement. The Parties expressly agree that uses of the Bridge Easement Property that are consistent with WSSA's historical use of the Bridge Easement Property are consistent with RTD's reasonable enjoyment of the Bridge Easement Property. Such uses include use of the Bridge Easement Property as an underpass under one or more railroad bridges for purposes

including, but not limited to: passage of pedestrian, livestock and vehicle traffic; transport of livestock feed and supplies; transport of equipment and supplies used by WSSA; and transport of trash and other waste generated on-site. WSSA's use of the Bridge Easement Property shall be in conformance with all appropriate ordinances, regulations, resolutions and laws of the governmental entity or entities with authority over the Bridge Easement Property.

**10. NO INTERFERENCE BY WSSA.** WSSA shall not interfere in any manner with the construction, operation, maintenance, repair and replacement of the Rail Line over or through the Bridge Easement Property. WSSA shall not place, erect, install, or permit on the Bridge Easement Property any building, structure or other above ground construction that may interfere with the Rail Line, unless it has RTD's express prior written consent. WSSA shall not take any action that would impair the lateral or subjacent support for the commuter rail line track or any pier, base or supporting structure, including the Center Pier. If WSSA violates the terms of this paragraph, then the violation shall immediately be eliminated by WSSA upon receipt of written notice from RTD. If WSSA does not immediately eliminate the violation, then RTD shall have the immediate right to correct or eliminate such violation at the expense of the WSSA. WSSA shall promptly reimburse RTD for any expenses related thereto.

**11. RTD'S USE OF THE BRIDGE EASEMENT PROPERTY; INSURANCE.** RTD, its contractors, subcontractors, agents, and anyone else acting on RTD's behalf or at RTD's direction (collectively, "RTD Agents") shall comply with all health and safety requirements applicable to the Bridge Easement Property including, without limitation, all applicable Occupational Safety and Health Administration requirements. RTD and any RTD Agents accessing the Bridge Easement Property will maintain a commercial general liability and automobile liability insurance policy covering the Bridge Easement Property with limits of liability of no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. RTD's self-insured automobile policy satisfies the automobile liability insurance policy requirement with regard to RTD. RTD and any RTD Agents accessing the Bridge Easement Property will also maintain Workers Compensation as required by statute, Employers Liability, and an excess or Umbrella policy in the amount of \$1,000,000 per occurrence. After commencement of revenue service of North Metro Corridor rail transit, WSSA may from time to time require reasonable adjustments in such insurance policies, including reasonable increases to policy limits. All such insurance policies shall name WSSA as additional insureds. RTD will require that any RTD Agents accessing the Bridge Easement Property indemnify WSSA to the same extent as RTD for any liabilities caused by their work.

**12. BENEFITS AND BURDENS.** The benefits and burdens of the Easements shall inure to and be binding upon the legal representatives, successors and permitted assigns of RTD and WSSA.

**13. RUNS WITH THE LAND.** The provisions of this Agreement shall run with the land. The Bridge Easement and Center Pier Easement shall be appurtenant to that certain property conveyed by WSSA to RTD in fee simple, pursuant to the Bargain and Sale Deed dated \_\_\_\_\_ and recorded in the real property records of the

City and County of Denver on \_\_\_\_\_ at Reception No.  
\_\_\_\_\_.

**14. MODIFICATION AND WAIVER.** This Agreement may not be modified except by a writing signed by all of the parties hereto. Neither party shall be deemed to have waived any right or remedy under or with respect to this Agreement unless such waiver is expressed in a writing signed by such party. No waiver of any right or remedy under or with respect to this Agreement by a party on any occasion or in any circumstance shall be deemed to be a waiver of any other right or remedy on that occasion or in that circumstance nor a waiver of the same or of any other right or remedy on any other occasion or in any other circumstance.

**15. HEADINGS AND INTERPRETATION.** Headings and captions contained in this Agreement are solely for the convenience of the parties and are not to be considered in interpreting or construing this Agreement or the parties' rights, remedies, and obligations hereunder. The words "herein," "hereof," and "hereunder," when used in this Agreement, refer to this Agreement in its entirety. Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include all genders.

**16. EXECUTION IN COUNTERPARTS; ELECTRONIC SIGNATURES.** This Agreement may be executed in several counterparts, including with electronic or scanned signatures, each of which will be an original and all of which will constitute one and the same document. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**17. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of the obligations set forth in this Agreement.

**18. APPLICABLE LAW; VENUE.** This Agreement will be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute shall be in the District Court for the City and County of Denver, Colorado.

**19. RECORDING.** RTD will record this Agreement with the Clerk and Recorder of the City and County of Denver.

**THIS AGREEMENT** shall become effective on the date it is signed by the appropriate representatives for Grantor and RTD.

**Grantor:**

**Western Stock Show Association, a Colorado non-profit corporation**

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

Title: \_\_\_\_\_

STATE OF COLORADO

CITY AND COUNTY OF DENVER

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2015 by

\_\_\_\_\_.

Witness my hand and official seal.

My commission expires:

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

**Grantee:**

**REGIONAL TRANSPORTATION DISTRICT**

By: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**[Printed Name]**

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Robert R. Duncan, Esq.  
The Law Office of Robert R. Duncan, LLC

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**CONSENT AND SUBORDINATION OF LENDER**

U.S. BANK NATIONAL ASSOCIATION, a national banking association (“**Lender**”), is the beneficiary under: (A) a First Deed of Trust, Security Agreement and Assignment of Rents granted by Western Stock Show Association, a Colorado nonprofit corporation (“**Borrower**”), to the Public Trustee of the City and County of Denver, Colorado (the “**Public Trustee**”), for the benefit of Lender, recorded on October 17, 2006 at Reception No. 2006165928 in the Real Estate Records of the City and County of Denver, Colorado (the “**County Records**”); and (B) an Amended and Restated First Deed of Trust, Security Agreement and Assignment of Rents granted by Borrower to the Public Trustee for the benefit of Lender, recorded on October 17, 2007 at Reception No. 2007162501 in the County Records (collectively, the “**Deeds of Trust**”).

Lender hereby consents to and approves the foregoing Bridge Easement Agreement and agrees that the lien(s) of the Deeds of Trust are subject and subordinate to the foregoing Bridge Easement Agreement.

Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2015.

**LENDER:**

U.S. BANK NATIONAL ASSOCIATION,  
a national banking association

By: \_\_\_\_\_

\_\_\_\_\_  
[Printed Name]

Title: \_\_\_\_\_

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

The foregoing Consent and Subordination of Lender, was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, as Vice President of U.S. Bank National Association, a national banking association.

Witness my hand and official seal.

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

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

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