

2014-0921

**36<sup>TH</sup> STREET YARD OFFICE FACILITY  
PROPERTY AGREEMENT**

**between**

**UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation**

**and**

**CITY AND COUNTY OF DENVER,  
a home rule municipal corporation of the State of Colorado**

\_\_\_\_\_, 2014

## TABLE OF CONTENTS

	Page
ARTICLE 1. DEFINITIONS.....	2
ARTICLE 2. SALE AND PURCHASE.....	5
2.1    RTD-UPRR Relocation Parcel; Access and Utility Easements.....	5
2.2    Pre-Closing Cooperation; Due Diligence of the RTD-UPRR Relocation Parcel.....	5
ARTICLE 3. INTENTIONALLY omitted.....	7
ARTICLE 4. DESIGN AND CONSTRUCTION OF UPRR RELOCATED FACILITIES.....	7
ARTICLE 5. INTENTIONALLY omitted.....	8
ARTICLE 6. INTENTIONALLY omitted.....	8
ARTICLE 7. MECHANICS LIENS.....	8
ARTICLE 8. REPRESENTATIONS.....	8
8.1    UPRR's Representations.....	8
8.2    City's Representations.....	8
8.3    Accuracy as of the Closing.....	9
8.4    Surviving Obligations.....	9
8.5    Notice of Breach.....	9
ARTICLE 9. RTD-UPRR RELOCATION PARCEL CONDITION.....	10
ARTICLE 10. COVENANTS.....	10
10.1    Just Compensation and Relocation Assistance.....	10
10.2    Mistakes in Legal Descriptions.....	10
10.3    Wazee Vacation.....	10
ARTICLE 11. CONDITIONS PRECEDENT TO CLOSINGS.....	10
11.1    UPRR's Conditions Precedent to the Closing.....	10
11.2    City's Conditions Precedent to the Closing.....	12
11.3    Notice of Termination.....	12
ARTICLE 12. RTD-UPRR RELOCATION PARCEL CLOSING.....	13
12.1    Closing.....	13
12.2    Closing Deliveries by UPRR.....	14
12.3    Closing Deliveries by City.....	14
12.4    Other Instruments.....	15
12.5    Prorations.....	15
12.6    Costs and Expenses.....	15
12.7    Delivery of Documents.....	15
12.8    Possession.....	16

ARTICLE 13. DEFAULTS AND REMEDIES.....	16
13.1    Default and Remedies.....	16
ARTICLE 14. MISCELLANEOUS .....	17
14.1    Appropriations.....	17
14.2    Status.....	17
14.3    When Rights and Remedies Not Waived.....	17
14.4    Audits.....	17
14.5    Venue and Governing Law.....	17
14.6    Conflict of Interest.....	17
14.7    Reasonableness of Consent or Approval.....	17
14.8    No Third Party Beneficiary.....	17
14.9    No Brokers.....	18
14.10   Binding on Successors; Assignment.....	18
14.11   Time of the Essence.....	18
14.12   Notices.....	18
14.13   No Discrimination in Employment.....	20
14.14   Waiver.....	20
14.15   Paragraph Headings.....	20
14.16   Agreement as Complete Integration – Amendments.....	20
14.17   Execution of Agreement.....	20
14.18   Legal Authority.....	20
14.19   Electronic Signatures and Electronic Records.....	20
14.20   Counterparts.....	21
14.21   Number and Gender.....	21
14.22   Parties-in-Interest.....	21
14.23   Recording.....	21
14.24   Further Assurances.....	21
14.25   Advice of Professionals.....	21
14.26   Negotiated Terms.....	21
14.27   Merger/Survival.....	21
14.28   No Partnership.....	21
14.29   No Personal Liability.....	22
14.30   IRS Real Estate Sales Report.....	22

**LIST OF SCHEDULES, EXHIBITS AND ADDENDA**

<b><u>Exhibit A</u></b>	Current Facilities Property
<b><u>Exhibit B</u></b>	UPRR-UPRR Relocation Parcel
<b><u>Exhibit C</u></b>	RTD-UPRR Relocation Parcel
<b><u>Exhibit D</u></b>	Assignment and Assumption Agreement
<b><u>Exhibit E</u></b>	Intentionally Omitted
<b><u>Exhibit F</u></b>	Bill of Sale
<b><u>Exhibit G</u></b>	Deed for RTD-UPRR Relocation Parcel

<u>Exhibit H</u>	Intentionally Omitted
<u>Exhibit I</u>	Access Easement Agreement
<u>Exhibit J</u>	Intentionally Omitted
<u>Exhibit K</u>	Wazee Vacation Parcel legal description
<u>Exhibit L</u>	Depiction of Sanitary Sewer Easement Line



## 36<sup>TH</sup> STREET YARD OFFICE FACILITY PROPERTY AGREEMENT

THIS 36<sup>TH</sup> STREET YARD OFFICE FACILITY PROPERTY AGREEMENT (this "Agreement" or "Property Agreement") is effective as of the Effective Date (defined below), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR") and CITY AND COUNTY OF DENVER, a home rule municipal corporation of the State of Colorado ("City").

### RECITALS

A. In connection with Regional Transportation District's ("RTD") construction of the segment of its FasTracks Passenger Rail Network known as the East Corridor, City intends to construct an overpass for pedestrian use (the "Ped Overpass") and certain related facilities (collectively, the "Ped Bridge Project"), which will impact a portion of UPRR's 36<sup>th</sup> Street Yard facilities (including UPRR's existing 36<sup>th</sup> Street Yard office building), which facilities are part of UPRR's Greeley Subdivision in the City and County of Denver, Colorado (collectively, the "UPRR Relocated Facilities").

B. The UPRR Relocated Facilities are currently located on UPRR property, as such property is more particularly depicted and described on Exhibit A attached hereto (the "Current Facilities Property"). In connection with the Ped Bridge Project, City intends to relocate the UPRR Relocated Facilities and to acquire from UPRR an easement for the Ped Overpass (the "Flyover Easement") and certain temporary construction rights related to construction of the Ped Bridge Project and the relocation of the UPRR Relocated Facilities.

C. The property to which the UPRR Relocated Facilities will be relocated is currently comprised of two separate parcels. One parcel is currently owned by UPRR, as such property is more particularly depicted on Exhibit B attached hereto (the "UPRR-UPRR Relocation Parcel"), and the other parcel is currently owned by RTD, as such property is more particularly depicted and described on Exhibit C attached hereto (the "RTD-UPRR Relocation Parcel").

D. City is acquiring from RTD its interest in the RTD-UPRR Relocation Parcel, a Sanitary Sewer Permanent Easement that will benefit the UPRR Relocated Facilities and an Access Easement with both UPRR and the City as grantees pursuant to that certain Intergovernmental Agreement (38<sup>th</sup> and Blake Station/UPRR Relocation) between City and RTD, (the "RTD/City IGA").

E. City, at its sole cost and expense, has agreed to relocate the UPRR Relocated Facilities to the RTD-UPRR Relocation Parcel and the UPRR-UPRR Relocation Parcel and thereafter, upon receipt of written notice from UPRR to the City as set forth in paragraph 7.1.2 of the Construction Agreement, demolish and remove the current Yard Office Building and other facilities on the Current Facilities Property all as set forth in the Construction Agreement (defined below).

F. In connection with the relocation of the UPRR Relocated Facilities, City desires to convey to UPRR the RTD-UPRR Relocation Parcel and obtain from RTD an access easement with both the City and UPRR as grantee for the UPRR Relocated Facilities in exchange for UPRR's conveyance of the Flyover Easement (which conveyance is being handled as a separate transaction).

G. Additionally, City and UPRR desire to enter into ancillary agreements that pertain respectively to the pre-closing design and construction work related to the UPRR Relocated Facilities and such other matters as are described herein.

H. In connection with the relocation of the UPRR Relocated Facilities, the City's Manager of Public Works will facilitate UPRR's initiation of the process for vacation of the portion of Wazee Street as depicted and described on **Exhibit K** attached hereto (the "**Wazee Vacation Parcel**") and will recommend to the Denver City Council ("**City Council**") that it approve such vacation.

I. Subject to the terms and conditions contained herein, City and UPRR now desire to enter into the transactions outlined in these Recitals and further described in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, City and UPRR hereby agree as follows:

### ARTICLE 1. DEFINITIONS

The following capitalized terms shall have the following meanings:

"**36<sup>th</sup> Yard Office Relocation Project**" shall have the meaning set forth in the Construction Agreement.

"**Access Easement**" shall refer to that certain permanent access easement granted by RTD to the City and UPRR providing fire and emergency access and secondary access, respectively, to and from the UPRR Relocated Facilities (and related property) over and across adjacent RTD property, the form of which is attached hereto as **Exhibit I**.

"**Agreement**" or "**Property Agreement**" shall mean this 36<sup>th</sup> Street Yard Office Facility Property Agreement, dated as of the Effective Date, by and between UPRR and City.

"**Assignment**" shall have the meaning set forth in Section 14.10 below.

"**Assignment and Assumption Agreement**" shall mean the form of assignment and assumption agreement attached hereto as **Exhibit D** transferring to UPRR (or UPRR's lessees, licensees or easement owners, as applicable), in connection with the RTD-UPRR Relocation Parcel Closing, all of City's (and/or RTD's) interest in those RTD-UPRR Relocation Parcel Leases and RTD-UPRR Relocation Parcel Other Agreements agreed to be assumed by UPRR pursuant to Section 2.2.4 below, and any and all warranties and guaranties applicable to the

RTD-UPRR Relocation Parcel not contained in the Deed or the Bill of Sale or otherwise addressed in the Construction Agreement.

"**Bill of Sale**" shall mean the form of bill of sale from the City, in substantially the form attached hereto as Exhibit F, quitclaiming to UPRR (or UPRR's lessees, licensees or easement owners, as applicable), in connection with the RTD-UPRR Relocation Parcel Closing, all of the personalty owned by City (and/or RTD) and located on the RTD-UPRR Relocation Parcel, not otherwise addressed in the Construction Agreement.

"**City**" shall mean the City and County of Denver, a home rule City and Colorado municipal corporation.

"**City Council**" shall have the meaning set forth in the Recitals.

"**City Project Manager**" shall mean the person designated by the City's Manager of Public Works to manage the UPRR Relocation Work.

"**Claimant**" shall have the meaning set forth in Section 8.5 below.

"**Claims Period**" shall have the meaning set forth in Section 8.5 below.

"**Closing**" shall have the meaning set forth in Section 12.1 below.

"**Closing Date**" shall have the meaning set forth in Section 12.1 below.

"**Closing Notice**" shall have the meaning set forth in Section 12.1 below.

"**Consultant**" or "**Consultants**" shall mean the agents, contractors, consultants and other representatives of City.

"**Costs**" shall have the meaning set forth in the Construction Agreement.

"**Current Facilities**" shall mean the existing UPRR 36<sup>th</sup> Street Yard Office.

"**Current Facilities Property**" shall have the meaning set forth in Recital B above and is generally depicted on Exhibit A attached hereto.

"**Deed for RTD-UPRR Relocation Parcel**" shall mean the quitclaim deed, in the form attached hereto as Exhibit G, whereby the City grants UPRR fee interest in the RTD-UPRR Relocation Parcel.

"**Effective Date**" shall mean the date set forth on the City's signature page.

"**Flyover Easement**" shall have the meaning set forth in the Recital B above.

"**RTD/City IGA**" shall have the meaning set forth in Recital D above.

"**Knowledge**" shall mean actual knowledge of a particular fact, without any duty of inquiry or investigation.

"**Notice of Breach**" shall have the meaning set forth in Section 8.5 below.

"**Notices**" shall have the meaning set forth in Section 14.12 below

"**Outside Closing Date**" shall have the meaning set forth in Section 12.1 below.

"**Ped Overpass**" shall have the meaning set forth in Recital A above.

"**Ped Bridge Project**" shall have the meaning set forth in Recital A above.

"**Preliminary Engineering Agreement**" shall mean that Preliminary Engineering Agreement between the City and UPRR dated January 27, 2014.

"**Relocation Acts**" shall mean the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, *et seq.*), the Colorado Relocation Assistance and Land Acquisition Policies Act (Colo. Rev. Stat. § 24-56-101, *et seq.*) and/or any other federal, state or local law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies.

"**RTD**" shall have the meaning set forth in Recital A above.

"**RTD-UPRR Relocation Parcel**" shall have the meaning set forth in Recital C above and is depicted and described on Exhibit C attached hereto.

"**RTD-UPRR Relocation Parcel Leases**" shall refer collectively to any and all leases granting rights to third parties to use the RTD-UPRR Relocation Parcel or any portion thereof, including all amendments and/or supplements thereto, but excluding the RTD-UPRR Relocation Parcel Other Agreements.

"**RTD-UPRR Relocation Parcel Other Agreements**" shall refer collectively to all licenses and agreements that cover the RTD-UPRR Relocation Parcel or any portion thereof, including all amendments and/or supplements thereto, but excluding the RTD-UPRR Relocation Parcel Leases.

"**Sanitary Sewer Easement**" shall refer to that certain sanitary sewer easement granted by RTD to City to permit City to own, operate and maintain a public sanitary sewer line the location of which is generally depicted on Exhibit L attached hereto and to allow the connection of a private service line thereto that will enable the UPRR Relocated Facilities to receive sanitary sewer service pursuant to the SUDP (defined below).

"**Sanitary Use and Drainage Permit**" or "**SUDP**" shall mean the permit to be issued by the City, in its regulatory capacity, to UPRR, as the owner of the UPRR Relocated Facilities, to provide for sanitary sewer service to the UPRR Relocated Facilities (and related property), which permit shall be issued on the City's standard form of Sanitary Use and Drainage Permit.

"**Surviving Obligations**" shall mean the obligations of either Party in Article 4, Article 8, Article 9, Article 10, Article 13 and Article 14, which shall survive termination of this Agreement or Closing.

"Title Company" shall mean Stewart Title Guaranty Company.

"UPRR" shall mean Union Pacific Railroad Company, a Delaware corporation.

"UPRR Relocated Facilities" shall have the meaning set forth in Recital A above.

"UPRR Relocated Facilities Construction Agreement" or "Construction Agreement" shall mean that certain Construction Agreement – 36<sup>th</sup> Street Yard Office Facility Relocation between UPRR and City.

"UPRR-UPRR Relocation Parcel" shall have the meaning set forth in Recital C above and is depicted on Exhibit B attached hereto.

"Wazee Vacation" shall have the meaning set forth in the Recital H above.

"Work" shall have the meaning set forth in the Construction Agreement.

## ARTICLE 2. SALE AND PURCHASE

### 2.1 RTD-UPRR Relocation Parcel; Access and Utility Easements.

2.1.1 Acquisition and Conveyance of RTD-UPRR Relocation Parcel. Subject to the terms and conditions of this Agreement, City (at City's sole cost and expense) agrees to (i) acquire from RTD (or any other party with legal title to the RTD-UPRR Relocation Parcel) at any time on or before the Closing and (ii) convey to UPRR, the RTD-UPRR Relocation Parcel, which property, together with the UPRR-UPRR Relocation Parcel, shall facilitate the relocation and construction of the UPRR Relocated Facilities. City shall not retain or reserve (or permit to be retained or reserved) any rights or interests in the RTD-UPRR Relocation Parcel, unless agreed to by UPRR as part of the due diligence process described herein.

2.1.2 Access Easement. City (at City's sole cost and expense) agrees to (i) acquire from RTD at any time on or before the Closing the Access Easement with UPRR and the City as grantees, which Access Easement will provide fire and emergency access to the City for, and secondary access to UPRR to, the UPRR Relocated Facilities. The Access Easement Agreement shall be in substantially the same form as attached hereto as Exhibit I and shall be recorded in the Denver County Clerk and Recorder's Office on or before the Closing.

2.1.3 Sanitary Sewer Easement. To facilitate the relocation and construction of UPRR's Relocated Facilities, City (at City's sole cost and expense) agrees to acquire from RTD at any time on or before the Closing the Sanitary Sewer Easement.

### 2.2 Pre-Closing Cooperation; Due Diligence of the RTD-UPRR Relocation Parcel.

2.2.1 Pre-Closing Cooperation. Pursuant to the Construction Agreement and the Preliminary Engineering Agreement as set forth in the Construction Agreement, City shall promptly reimburse UPRR for all of UPRR's Costs incurred in connection with City's acquisition of the undivided fee simple title to the RTD-UPRR Relocation Parcel, acquisition of the Access and Sanitary Sewer Easement and any other cooperation by UPRR to facilitate City's



investigation, review and inspection of the RTD-UPRR Relocation Parcel, UPRR-UPRR Relocation Parcel, Access Easement Area and/or Sanitary Sewer Easement Area as provided herein. City agrees to keep UPRR fully informed regarding all environmental studies, plans, covenants, agreements and remedial work coordinated by City that affect the RTD-UPRR Relocation Parcel, Access Easement Area and/or the Sanitary Sewer Easement Area, and to fully cooperate with UPRR, addressing all UPRR's concerns, regarding such matters. In addition, UPRR agrees to cooperate with the City in executing, as necessary, all documents needed to obtain regulatory approvals for the UPRR Relocated Facilities, including, but not limited to, the Zone Lot Amendment, Zoning Use Permit, SUDP, Permanent Non-Exclusive Easement related to private storm water facilities, and the Site Development Plan; provided, however, that UPRR shall have the right to object to any documents or regulatory approvals that unreasonably interfere with UPRR's use and enjoyment of the RTD-UPRR Relocation Parcel or the UPRR-UPRR Relocation Parcel..

### 2.2.2 City's Deliverables.

2.2.2.1 Unless otherwise previously delivered, within fifteen (15) days after the Effective Date, City, at its sole cost and expense, shall deliver to UPRR true and complete copies of all of the following documents and materials pertaining to the RTD-UPRR Relocation Parcel, if any: (i) a current survey; (ii) environmental, engineering, inspection, structural and soils reports; (iii) RTD-UPRR Relocation Parcel Leases, (iv) RTD-UPRR Relocation Parcel Other Agreements; (v) a title insurance commitment issued by Title Company committing to issue to UPRR a title policy for the RTD-UPRR Relocation Parcel together with a tax certificate and legible copies of all documents that affect and encumber title; (vi) all documents and filings related to any purchase transaction and/or eminent domain action by City to acquire the RTD-UPRR Relocation Parcel, (vii) recent appraisals.

2.2.2.2 Unless otherwise previously delivered, within sixty (60) days prior to Closing, City, at its sole cost and expense, shall deliver to UPRR true and complete copies of all of the following documents and materials pertaining to the UPRR Relocated Facilities Parcel, if any: (i) a Zoning Use Permit evidencing that the RTD-UPRR Relocation Parcel is allowed "by-right" for all of the intended uses (which evidence shall be re-confirmed within fifteen (15) days prior to the Closing) and (ii) the following entitlement documentation: the SUDP, Site Development Plan, Building Permits and other permits, easements and documentation held by the City as permittee, or issued by the City in its regulatory capacity, as of the Effective Date, and (iii) an updated title insurance commitment issued by Title Company committing to issue to UPRR a title policy for the RTD-UPRR Relocation Parcel at the Closing together with a tax certificate and legible copies of all documents that affect and encumber title. City shall have a continuing obligation to disclose and deliver to UPRR the above-listed items or any updates thereto.

2.2.3 UPRR's Inspection and Testing. The RTD/City IGA provides City and UPRR with certain inspection, review and investigation rights in connection with the RTD-UPRR Relocation Parcel. Pursuant to the terms of the RTD/City IGA, UPRR shall have the right to access, inspect and test the RTD-UPRR Relocation Parcel. Each party agrees that, upon reasonable request by the other party, it shall promptly deliver to the other party (the actual costs therefor to be paid by City pursuant to the Construction Agreement), the results and copies of any and all surveys, reports, tests, studies and assessments made with respect to the RTD-UPRR Relocation Parcel and the UPRR-UPRR Relocation Parcel in its possession.

2.2.4 Completion of UPRR's Due Diligence. UPRR shall have until thirty (30) days after the City delivers the items set forth in Section 2.2.2.1 (or any updated title commitments in Section 2.2.2.2 showing any new matters of record) to complete its due diligence of the RTD-UPRR Relocation Parcel and deliver written notice to City of any objections ("Notice of Objection"). Such notice shall include a list of any RTD-UPRR Relocation Parcel Leases and RTD-UPRR Relocation Parcel Other Agreements that UPRR desires to assume concurrently with the Closing. Any RTD-UPRR Relocation Parcel Leases and/or RTD-UPRR Relocation Parcel Other Agreements that UPRR does not agree in writing to assume shall be terminated by City on or before the Closing Date. In the event that UPRR fails to timely deliver any such notice to City with respect to the RTD-UPRR Relocation Parcel Leases and RTD-UPRR Relocation Parcel Other Agreements, then UPRR shall be deemed to have rejected all RTD-UPRR Relocation Parcel Leases and RTD-UPRR Relocation Parcel Other Agreements, and City shall terminate all such leases and other agreements on or before the Closing Date. On or before the date five (5) business days after the Notice of Objection date, City shall use reasonable efforts to remove all monetary liens and encumbrances, and to cure all other objections to UPRR's satisfaction. If any objection item has not been cured to UPRR's satisfaction in a timely manner, UPRR shall have the right in its sole discretion to terminate this Agreement, delay the Closing Date or waive such uncured objections.

### **ARTICLE 3. INTENTIONALLY OMITTED**

### **ARTICLE 4. DESIGN AND CONSTRUCTION OF UPRR RELOCATED FACILITIES**

Concurrently with the execution of this Agreement, the parties have executed the UPRR Relocated Facilities Construction Agreement. The Construction Agreement governs the applicable pre-closing relocation and construction work, the demolition of the Current Facilities and the construction, relocation and acceptance of the UPRR Relocated Facilities (which work shall occur both on and in the vicinity of the Current Facilities Property, the UPRR-UPRR Relocation Parcel and the RTD-UPRR Relocation Parcel). City's performance under the UPRR Relocated Facilities Construction Agreement is a material part of the consideration for UPRR's entering into this Agreement, and any material breach of such Construction Agreement by City shall be deemed to be a breach of this Agreement.

**ARTICLE 5. INTENTIONALLY OMITTED**

**ARTICLE 6. INTENTIONALLY OMITTED**

**ARTICLE 7. MECHANICS LIENS**

The provisions regarding mechanic and materialman liens related to the City Work, including any demolition of the Current Facilities are set forth in the Construction Agreement

**ARTICLE 8. REPRESENTATIONS**

8.1 UPRR's Representations. UPRR represents that as of the Effective Date, and as of the Closing Date (subject to Section 8.3):

8.1.1 Corporate Good Standing. UPRR is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and able to do business in the State of Colorado.

8.1.2 Authority. UPRR has full corporate power and authority to enter into this Agreement and the UPRR Relocated Facilities Construction Agreement, and, subject to any necessary regulatory authority, to carry out the obligations of UPRR under this Agreement and the UPRR Relocated Facilities Construction Agreement.

8.1.3 Binding Agreement. This Agreement has been duly authorized, executed and delivered by UPRR and is a legal, valid and binding agreement of UPRR, enforceable against UPRR in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). Neither the execution and delivery of this Agreement, the UPRR Relocated Facilities Construction Agreement and the Due Diligence ROE, the consummation by UPRR of the transactions contemplated thereby, nor compliance or performance by UPRR with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to UPRR or any provisions of UPRR's certificate of incorporation or by-laws, or result in any material breach of, or constitute a material default under any agreements to which UPRR is a party or by which any of the related property is bound.

8.2 City's Representations. The City's Director of the Division of Real Estate ("Director") represents that as of the Effective Date and as of the Closing Date (subject to Section 8.3):

8.2.1 Good Standing. City is a home rule municipal corporation duly organized, validly existing, and in good standing under the laws of the State of Colorado.

8.2.2 Authority. City has full power and authority to enter into this Agreement and the Construction Agreement, including, subject to applicable law, to carry out the obligations of City under this Agreement and the Construction Agreement.



8.2.3 Binding Agreement. This Agreement has been duly authorized, executed and delivered by City and is a legal, valid and binding agreement of City, enforceable against City in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law). To the Knowledge of the Director, neither the execution and delivery of this Agreement, and the Construction Agreement by City, the consummation by City of the transactions contemplated thereby, nor compliance or performance by City with any of the provisions thereof does or will violate any judgment, order, law or regulation applicable to City or any provisions of City's statutory authority, or result in any breach of or constitute a default under any agreements to which City is a party.

8.2.4 No Judgments. The Director has no Knowledge of any actions, suits or proceedings pending against City, or any other facts, that would prevent or hinder the sale and transfer of the RTD-UPRR Relocation Parcel to UPRR.

8.2.5 Subdivision and Zoning. The real property transactions described herein comply, or by the time of the Closing will comply, with all applicable state and local laws regarding the subdivision of legal parcels (which compliance may include legal nonconforming parcels). The RTD-UPRR Relocation Parcel shall be zoned, as of the Closing Date, to allow UPRR's and UPRR's lessees', licensees' and easement owners' intended uses of such property "by right" (without special or conditional use permits), which zoning may include any legal nonconforming use status available to UPRR as evidenced by the Zoning Use Permit.

8.3 Accuracy as of the Closing. All representations by the respective parties contained herein (as updated) are intended to remain true and correct as of the Closing Date, and are deemed to be restated at the Closing except with respect to variance(s) of which written notice(s) are given as provided below in this Section 8.3. In the event a party (or City's Director, in the case of the representations limited to the Knowledge of the Director) has Knowledge that a representation in this Article 8 is no longer true and correct after the Effective Date, such party shall immediately give the other party written notice of such variance. The party benefited by the representation may elect to terminate this Agreement or may waive the variance by giving the other party written notice of such election (i) within ten (10) days after such written notice of variance is received, or (ii) prior to the Closing, in the event such notice is received within ten (10) days of the Closing Date. If the benefited party does not give timely notice of termination or waiver, then the benefited party will be deemed to have waived the variance. If this Agreement is terminated pursuant to this Section 8.3, neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

8.4 Surviving Obligations. Except as otherwise expressly provided herein or in the Deed for RTD-UPRR Relocation Parcel, the representations set forth in this Article 8 by UPRR and City shall survive the Closing for a period of one (1) year and shall then expire and terminate.

8.5 Notice of Breach. Neither UPRR nor City shall have any cause of action or claim for breach of representations in connection with the Closing (such party having a claim being referred to herein as a "Claimant") unless a "Notice of Breach" shall have been theretofore

delivered by Claimant to the party claimed to be in breach within one (1) year following the Closing Date (the "**Claims Period**"). Failure of a Claimant to deliver a Notice of Breach within the Claims Period shall terminate in connection with the Closing any and all causes of action, claims or rights with respect to the alleged breach by the other party of any such representation or warranty. Each Notice of Breach shall describe with reasonable specificity and particularity the nature of the alleged breach.

#### **ARTICLE 9. RTD-UPRR RELOCATION PARCEL CONDITION**

The City makes no representations or warranties or any kind with respect to the condition of the RTD-UPRR Relocation Parcel. UPRR accepts the RTD-UPRR Relocation Parcel in its "AS-IS" condition with all faults and at UPRR's own risk.

#### **ARTICLE 10. COVENANTS**

10.1 Just Compensation and Relocation Assistance. Provided the transfer of the RTD-UPRR Relocation Parcel to UPRR closes pursuant to this Agreement, and City fulfills all of its obligations under this Agreement and the Construction Agreement, UPRR acknowledges and agrees that it will be fully compensated for the conveyance of the Flyover Easement and is not entitled to any further assistance under the provisions of the Relocation Acts, by reason of the transactions contemplated by this Agreement or the Crossing Agreement related to the Flyover Easements. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to create or impair any rights of any third parties to seek assistance under the provisions of the Relocation Acts.

10.2 Mistakes in Legal Descriptions. If, after the Closing, UPRR or City discovers any mistakes in the legal description of the RTD-UPRR Relocation Parcel, UPRR and City shall work cooperatively to correct such mistakes.

10.3 Wazee Vacation. The City's Manager of Public Works shall facilitate UPRR's initiation of the City's process to vacate the Wazee Vacation Parcel and shall recommend approval of the vacation by the City Council. UPRR understands that the City cannot bind City Council to approve the Wazee vacation, and the City cannot provide any assurances that City Council will do so.

#### **ARTICLE 11. CONDITIONS PRECEDENT TO CLOSINGS**

11.1 UPRR's Conditions Precedent to the Closing. Performance by UPRR in connection with the Closing is subject to the satisfaction of the following conditions precedent:

11.1.1 Completion of Construction of the UPRR Relocated Facilities. (i) The RTD-UPRR Relocation Parcel shall have been entitled for UPRR's use as evidenced by a Zoning Use Permit; (ii) the Work under the Construction Agreement shall have been substantially completed in accordance with and pursuant to the terms of the Construction Agreement; and (iii) City shall not be in default and shall have paid Costs (defined in the Construction Agreement) invoiced as of 30 days prior to the Closing Date in connection with the acquisition of the RTD-UPRR Relocation Parcel, Access Easement and the Sanitary Sewer Easement and the Work under the Construction Agreement and the Preliminary Engineering Agreement, it being

understood that the City's obligation to pay any unpaid Costs as of the Closing Date shall survive Closing.

11.1.2 Utility and Fiber Optics Relocations. (i) All utilities required to be relocated in connection with the relocation of the UPRR Relocated Facilities shall have been relocated pursuant to the Construction Agreement; and (ii) City shall not be in default and shall have fully paid all Costs invoiced as of 30 days prior to the Closing Date not paid by third parties, it being understood that the City's obligation to pay any unpaid Costs as of the Closing Date shall survive Closing.

11.1.3 Other Relocation Costs. City shall have satisfied all exactions, conditions of approval and contractual obligations imposed with respect to the RTD-UPRR Relocation Parcel; and City shall have paid Costs invoiced as of 30 days prior to the Closing Date in connection therewith pursuant to the Construction Agreement, it being understood that the City's obligation to pay any unpaid Costs as of the Closing Date shall survive Closing.

11.1.4 No Work Stoppage. There shall be no work stoppage imminent or in effect on the railroad lines of UPRR or on the UPRR property as a result of the execution or implementation of this Agreement.

11.1.5 Public Utilities. If required by any governmental entity in connection with the UPRR Relocated Facilities Work (with respect to the Closing), as applicable, City shall have caused the relocation of any existing public utilities in connection therewith, and City shall have paid any associated costs of such relocation invoiced as of 30 days prior to the Closing Date pursuant to the Construction Agreement, it being understood that the City's obligation to pay any unpaid costs as of the Closing Date shall survive Closing.

11.1.6 No Legislative, Judicial or Administrative Action. UPRR shall not be prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or administrative action.

11.1.7 Compliance by City. City shall have substantially complied with each and every condition and covenant of this Agreement (and documents executed in connection with the Closing), and of the Construction Agreement, to be kept or complied with by City.

11.1.8 Representations of City. Subject to Section 8.3, all representations made by City under this Agreement shall be true and correct and all covenants of City to be performed before the Closing shall have been performed, as of the Closing Date.

11.1.9 Closing Documents. UPRR shall have approved the forms of the Closing documents.

11.1.10 Entitlements. The RTD-UPRR Relocation Parcel shall have been entitled for UPRR's use as evidenced by a Zoning Use Permit.

11.1.11 Reverter. In relation to the reversionary interest being reserved by RTD in the RTD-UPRR Relocation Parcel under the RTD/City IGA, UPRR agrees to work in good faith with the City to submit to RTD a Notice of Final Acceptance upon UPRR's acceptance on

the UPRR Relocated Facilities Work. Pursuant to the RTD/City IGA, within 10 business days of RTD's receipt of such Notice of Final Acceptance, RTD is contractually obligated to execute and record the RTD-UPRR Relocation Parcel Reverter Quitclaim Deed, which quitclaims to the City all of RTD's reversionary and other interests in the RTD-UPRR Relocation Parcel (which interests will ultimately be conveyed to UPRR pursuant to terms contained herein). Recording of such RTD-UPRR Relocation Parcel Reverter Quitclaim Deed, which shall be the responsibility of the City at its cost, is a condition precedent to Closing.

11.1.12 Wazee Vacation. The Wazee Vacation shall have been approved by City Council.

11.1.13 Additional Entitlements and Easements. All required regulatory approvals shall have been obtained for the UPRR Relocated Facilities, including, but not limited to, the Zone Lot Amendment, Zoning Use Permit, SUDP, Permanent Non-Exclusive Easement related to private storm water facilities, and the Site Development Plan.

11.2 City's Conditions Precedent to the Closing. Performance by City in connection with the Closing is subject to the satisfaction of the following conditions precedent:

11.2.1 No Legislative, Judicial or Administrative Action. City shall not be prevented from fulfilling its obligations under this Agreement as a result of legislative, judicial or administrative action.

11.2.2 City Council Approval. City shall have received all necessary approvals from City Council to enter into this Agreement and consummate the transactions contemplated by this Agreement under all of the terms and conditions hereof. City shall have delivered to UPRR all of City Council's documents and actions necessary to evidence City's authority to complete the transaction contemplated by this Agreement.

11.2.3 Compliance by UPRR. UPRR shall have substantially complied with each and every condition and material covenant of this Agreement and the Construction Agreement to be kept or complied with by UPRR.

11.2.4 Representations of UPRR. Subject to Section 8.3, all representations made by UPRR under this Agreement shall be true and correct and all covenants of UPRR to be performed before the Closing shall have been performed, as of the Closing Date.

11.2.5 Closing Documents. City shall have approved the forms of the Closing documents.

11.2.6 Acceptable Bid for the UPRR Relocation Work. The City shall have received and accepted a bid for the UPRR Relocation Work pursuant to the Construction Agreement.

11.3 Notice of Termination. City or UPRR may terminate this Agreement if any applicable condition precedent for its benefit in connection with a Closing remains unsatisfied in whole or in part, and is not reasonably expected to be promptly satisfied despite the reasonable efforts of the party benefited by such condition precedent, by delivering written notice of such



termination to the other party at any time sixty (60) days prior to the Closing Date. If such termination notice is not timely delivered, UPRR and City shall be deemed to have waived their respective termination rights under this Article. In the event of such termination, neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations.

## ARTICLE 12. RTD-UPRR RELOCATION PARCEL CLOSING

### 12.1 Closing.

12.1.1 Closing Notice. The consummation of the transactions contemplated by this Agreement relating to the RTD-UPRR Relocation Parcel and recording of the Deed for RTD-UPRR Relocation Parcel from the City to UPRR (the "**Closing**") shall occur, and delivery of all items to be made at the Closing under the terms of this Agreement shall be made on the date specified in the written notice to be delivered by UPRR to City and Title Company at least five (5) business days prior to the closing date for the Closing ("**Closing Notice**").

12.1.2 Closing Date; Outside Closing Date. It is anticipated that the date of the Closing (the "**Closing Date**") will be September 30, 2015; provided that in no event shall the Closing occur later than September 30, 2016 (the "**Outside Closing Date**").

12.1.3 Title Company Instructions and Pre-Closing Conditions. UPRR shall have no obligation to proceed with the Closing hereunder unless each and every condition for its benefit applicable to the Closing, as set forth in Article 11 and this Article 12, has occurred on or before the Closing Date. Provided that in connection with the Closing (i) Title Company can comply with these instructions, (ii) Title Company has received the deliverables described in this Article 12 applicable to the Closing, and (iii) Title Company has not received prior written notice from a party that any condition precedent to such party's obligations with respect to the Closing has not been fulfilled, or that either City or UPRR has properly exercised any right to terminate this Agreement, then Title Company is authorized and instructed to: (a) if not previously recorded, record the Deed for RTD-UPRR Relocation Parcel, the Access Easement, the Sanitary Sewer Easement and any other documents to be recorded in the Denver County Clerk and Recorder's Office in connection with the Closing, (b) deliver a conformed copy of the recorded document(s) and fully executed counterparts of all the other Closing documents in connection with the Closing to City and UPRR, and (c) deliver the approved settlement statements to City and UPRR in accordance with Section 12.1.5 below.

12.1.4 Failure to Close. If the Closing does not occur on or before the Outside Closing Date, then either party not then in default may elect (i) to extend the Closing Date to a date certain by giving written notice of such extension to the other party and to Title Company, or (ii) to terminate this Agreement by giving written notice of such termination to the other party and to Title Company, or (iii) to seek specific performance by the other party, and only in the event that all conditions precedent have been satisfied, or are not reasonably expected to be promptly satisfied by the reasonable efforts of the party benefited by the condition precedent, or waived. In the event of such termination, neither party shall have any further obligations hereunder except for the Surviving Obligations, and all documents and other instruments shall be returned to the party depositing the same with Title Company. The termination of this

Agreement as provided herein shall be without prejudice to whatever legal rights, as said rights may be limited by the terms contained in this Agreement, which City or UPRR may have against each other arising out of this Agreement. If neither party elects to terminate this Agreement, Title Company shall cooperate to close the transaction related to the RTD-UPRR Relocation Parcel as soon as possible and the date upon which such transaction actually closes shall be deemed the new Closing Date with respect to such Closing.

12.1.5 Settlement Statements. If Title Company is able to comply with the instructions herein and with those recording and wiring instructions to be provided, at the Closing, Title Company shall deliver to UPRR a true, correct and complete copy of UPRR's settlement statement, and shall deliver to City at the Closing a true, correct and complete copy of City's settlement statement.

12.2 Closing Deliveries by UPRR. Not later than one (1) business day prior to the Closing Date, UPRR shall deposit with Title Company (as set forth in the recording and wiring instructions) the following items:

12.2.1 Assignment and Assumption Agreement for RTD-UPRR Relocation Parcel. Two (2) counterpart originals of an Assignment and Assumption Agreement duly executed by UPRR;

12.2.2 Certificate. An executed certificate of UPRR's Assistant Secretary, certifying that UPRR is authorized to enter into this Agreement and the UPRR Relocated Facilities Construction Agreement and to consummate the transactions contemplated hereby and thereby; and

12.2.3 Settlement Statement and Other Documents. The settlement statement for UPRR, and any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing that have not previously been delivered.

12.3 Closing Deliveries by City. Not later than one (1) business day prior to the Closing Date, City shall deposit with Title Company (as set forth in the recording and wiring instructions) the following items:

12.3.1 Deed for RTD-UPRR Relocation Parcel. One (1) original of the Deed for RTD-UPRR Relocation Parcel, subject only to the permitted exceptions set forth in the deed of such parcel from RTD to City as shall have been approved by UPRR, duly executed by City and acknowledged, together with a title policy commitment insuring UPRR's interest in the RTD-UPRR Relocation Parcel in form and substance satisfactory to UPRR;

12.3.2 Bill of Sale for RTD-UPRR Relocation Parcel. One (1) original of the Bill of Sale duly executed by City;

12.3.3 Sanitary Use and Drainage Permit. A copy of the Sanitary Use and Drainage Permit issued by the City in relation to the UPRR Relocated Facilities.

12.3.4 Assignment and Assumption Agreement for RTD-UPRR Relocation Parcel. Two (2) counterparts of an Assignment and Assumption Agreement duly executed by City;

12.3.5 City Council Ordinance. A certified copy of the Ordinance of City Council authorizing City to enter into this Agreement and the Construction Agreement;

12.3.6 Tax Letter. Such letter(s) as UPRR may reasonably request from City related to UPRR's filings with appropriate taxing authorities for this Agreement; and

12.3.7 Settlement Statement and Other Documents. The settlement statement for City, and any other documents, instruments, data, records, correspondence or agreements reasonably necessary for the Closing that have not been previously delivered.

12.4 Other Instruments. UPRR and City shall each deposit such other instruments and take such other actions as are reasonably required by Title Company or otherwise required to close escrow related to the Closing, and the conveyance of the RTD-UPRR Relocation Parcel, in accordance with the terms hereof.

12.5 Prorations.

12.5.1 Revenues and Expenses. All revenues and expenses attributable to the RTD-UPRR Relocation Parcel shall be prorated and apportioned between City and UPRR as of 12:01 a.m. on the applicable Closing Date, so that City shall bear all expenses attributable to and have the benefit of all income attributable to this Agreement through and including the date immediately preceding such Closing Date.

12.5.2 Special Taxes, Bonds or Assessments. If, at the time of the Closing, any portion of the RTD-UPRR Relocation Parcel is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment shall be prorated as of 12:01 a.m. on the Closing Date. All installments not yet then due whether or not the same have been prepaid shall not be prorated, and UPRR shall assume such bonds or assessments after the Closing. In addition, UPRR shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the RTD-UPRR Relocation Parcel following the Closing for applicable liabilities now or hereafter imposed by any governmental authority.

12.6 Costs and Expenses. Notwithstanding any other allocation of costs and expenses set forth in this Agreement that applies in the event the Closing does not occur, the costs and expenses of the Closing shall be allocated as follows: City shall pay the premium for the title policy issued to UPRR in connection with the Closing, including all endorsements thereto, and the cost of any sales, use, documentary or other transfer taxes, as well as all recording costs and other miscellaneous costs related to the Closing. City shall also pay all other standard costs and charges of Title Company to conduct the Closing.

12.7 Delivery of Documents. In connection with the Closing hereunder, all instruments and documents related to the Closing shall be delivered forthwith to each party's

attorney specified in Section 14.12. Title Company shall forthwith deliver to the party entitled thereto the recorded originals of such instruments or documents upon Title Company's receipt of the same.

12.8 Possession. Possession of the RTD-UPRR Relocation Parcel shall be delivered to UPRR at the Closing, subject to the Permitted Exceptions and the other terms and conditions of this Agreement.

### ARTICLE 13. DEFAULTS AND REMEDIES

#### 13.1 Default and Remedies.

##### 13.1.1 Remedies.

Subject to the other provisions of this Section 13.1, in the event that either City or UPRR fails to perform or comply with any of its obligations or the terms contained in this Agreement, the non-defaulting party shall have the right to seek specific performance against the defaulting party as the exclusive remedy hereunder. In the alternative, the non-defaulting party shall have the right to terminate this Agreement if the default is not cured within the applicable cure period set forth in this Section 13.1, and neither party shall have any further rights or obligations under this Agreement except for the Surviving Obligations. Without limiting the foregoing and in addition to the remedies set forth above, in the event of a default under this Agreement by City or if the Closing otherwise fails to occur for reasons other than a default by UPRR, UPRR shall also have the right to terminate the Flyover Easement and the New Pedestrian Bridge Overpass Crossing Agreement between the parties and dated of even date herewith ("**Crossing Agreement**"), pursuant to the termination process set forth in the Crossing Agreement. City and UPRR, for themselves and their successors and assigns, hereby waive the remedies of consequential and punitive damages against the other party and all other remedies available at law or in equity.

##### 13.1.2 City's Default.

In the event of a default under this Agreement or the Crossing Agreement by City, UPRR shall give City written notice specifying such default and City shall have the opportunity to cure such default within ninety (90) days after receipt of such notice. Failure of UPRR to provide notice of such default shall not constitute a waiver of such default. In the event that City fails to timely cure such default, City shall remain liable for all title and survey Costs.

##### 13.1.3 UPRR's Default.

In the event of a default under this Agreement by UPRR, City shall give UPRR written notice specifying such default and UPRR shall have the opportunity to cure such default within ninety (90) days after receipt of such notice. Failure of City to provide notice of such default shall not constitute a waiver of such default. In the event that UPRR fails to timely cure such default, City shall deliver to UPRR all of the materials required to be delivered to UPRR pursuant to Sections 7.2 and 7.5 hereof. City shall remain liable for all title and survey Costs.



## ARTICLE 14. MISCELLANEOUS

14.1 Appropriations. Any and all obligations of the City hereunder, whether direct or contingent, which require funding, are subject to and shall extend only to prior annual appropriations of money expressly made by the Denver City Council for the purposes of this Agreement, encumbered for the purposes of this Agreement, and paid therefore into the Treasury of the City.

14.2 Status. It is not intended, nor shall it be construed, that either party or any employee or subcontractor of such party is an employee, officer, or agent of the other party for purposes of unemployment compensation, workers' compensation, or for any purpose whatsoever.

14.3 When Rights and Remedies Not Waived. In no event shall any payment or performance hereunder by either party constitute or be construed to be a waiver by such party of a breach of any term, covenant or condition, or default which may then exist on the part of the other party, and the making of any such payment or rendering of such performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the non-breaching party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Agreement shall be construed as a waiver of any succeeding or other breach.

14.4 Audits. UPRR shall, during normal business hours and as often as the City may deem reasonably necessary, make available to the City, including its Auditor, for examination all of its records and data with respect to all matters covered by this Agreement and shall permit the City or its designated or authorized representative to audit and inspect all invoices, materials, payrolls, records of personal conditions or employment and other data relating to all matters covered by this Agreement. Such records shall be maintained for a minimum period of three years following payment for services hereunder.

14.5 Venue and Governing Law. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of Colorado law and/or applicable Federal Law. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

14.6 Conflict of Interest. The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and UPRR further agrees not to hire or contract for services any employee or officer of the City, which would be in violation of the Denver Revised Municipal Code.

14.7 Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

14.8 No Third Party Beneficiary. The parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and UPRR, and nothing contained in this Agreement shall give or

allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, subconsultants, and suppliers. The parties intend that any person other than the City or UPRR receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

14.9 No Brokers. UPRR and City each represent to the other that no real estate brokers', agents' or finders' fees or commissions are due or arising in connection with the execution of this Agreement or the consummation of the transactions contemplated herein.

14.10 Binding on Successors; Assignment. This Agreement and the terms, covenants and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of City are material inducements to UPRR in entering into this Agreement. Therefore, except as provided for in this Agreement and the Construction Agreement, City may not assign, in whole or in part, any of its rights or delegate any of its duties under this Agreement and/or any agreement related hereto (an "**Assignment**"), to any third party without the prior written consent of UPRR, which consent may be withheld in UPRR's reasonable discretion. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by City whether voluntary, by operation of law or otherwise, in violation of this Section, shall be absolutely void. UPRR may not assign this Agreement without the prior written consent of the City's Manager of Public Works, which consent shall not be unreasonably withheld, conditioned or delayed.

14.11 Time of the Essence. Time is important to both UPRR and City in the performance of this Agreement, and they have agreed that strict compliance is required as to any date set forth herein. If the final date of any period which is set forth in any term or condition of this Agreement falls upon a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the property is located, then, and in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

14.12 Notices. Any notice or other communication required or permitted to be given under this Agreement ("**Notices**") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid or (iv) delivered by facsimile or e-mail. Facsimile and e-mail notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual Notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earliest of (x) actual receipt; or (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (z) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If intended for UPRR:

UNION PACIFIC RAILROAD COMPANY  
Assistant Vice President Real Estate  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179-1690  
Telephone: 402-544-8640  
Facsimile: 402-501-0340  
E-mail: [tklove@up.com](mailto:tklove@up.com)

with copies to:

UNION PACIFIC RAILROAD COMPANY  
Patrick R. McGill, Esq.  
Senior Counsel – Real Estate  
1400 Douglas Street, Mail Stop 1580  
Omaha, NE 68179  
Telephone: 402-544-5761  
Facsimile: 402-544-0132  
E-mail: [prmcgill@uprr.com](mailto:prmcgill@uprr.com)

HUSCH BLACKWELL LLP  
Shane C. Orr, Esq.  
1700 Lincoln Street, Suite 4700  
Denver, CO 80203  
Telephone: 303-389-4655  
Facsimile: 303-749-7272  
E-mail: [Shane.Orr@huschblackwell.com](mailto:Shane.Orr@huschblackwell.com)

If intended for City:

Manager of Public Works  
City and County of Denver  
201 W. Colfax Avenue, Dept. 608  
Denver, CO 80202

with copies to:

Denver City Attorney  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202  
Attn: Karen Aviles

Director of the Division of Real Estate  
City and County of Denver  
201 W. Colfax Avenue, Dept. 1010  
Denver, CO 80202

If intended for Title Company:

Stewart Title Guaranty Company  
50 S. Steele Street, Suite 600  
Denver, CO 80209  
Attn: Carma D. Weymouth  
Telephone: 303-780-4015  
Facsimile: 303-331-9867  
E-mail: [cweymouth@stewart.com](mailto:cweymouth@stewart.com)

14.13 No Discrimination in Employment. In connection with the performance of all work under this Agreement, UPRR agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, nation origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in furtherance of this Agreement.

14.14 Waiver. No rights may be waived except by an instrument of writing signed by the party charged with such waiver. No assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding or other breach.

14.15 Paragraph Headings. The captions and headings of this Agreement are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

14.16 Agreement as Complete Integration – Amendments. This Agreement and the Construction Agreement are intended as the complete integration of all understandings between the parties with respect to the subject matter herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the parties. No City Council approval of such amendment is needed unless required by City Charter. This Agreement and any amendments shall be binding upon the parties, their successors and assigns.

14.17 Execution of Agreement. This Agreement is expressly subject to, and shall not be or become effective or binding until fully executed by all signatories of the City, as set forth in the signature blocks at the end hereof.

14.18 Legal Authority. Each Party represents that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken to enter into this Agreement.

14.19 Electronic Signatures and Electronic Records. Parties hereto consent to the use of electronic signatures by either party. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the

City. The Parties agree not to deny the legal effect or enforceability of this 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 this 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.

14.20 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.21 Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

14.22 Parties-in-Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right to subrogation or action over or against any party to this Agreement.

14.23 Recording. This Agreement shall not be recorded by the parties.

14.24 Further Assurances. Each party to this Agreement agrees to execute, acknowledge and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

14.25 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

14.26 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

14.27 Merger/Survival. Except as otherwise expressly provided herein, the parties' covenants to transfer title contained herein shall merge into the Deed to be delivered at the Closing and shall not survive such Closing.

14.28 No Partnership. Nothing contained herein and no act by City or UPRR in the performance of, or in any relation to, this Agreement will be construed to create or evidence in any manner any employment, partnership, agency or joint venture relationship between the parties hereto. City and UPRR represent and acknowledge that it is their mutual intention that the sole relationship created by this Agreement is that of vendor and purchaser.



14.29 No Personal Liability. No officer, director, employee or agent of either party, nor any of their respective heirs, administrators, executors, personal representatives, successors or assigns, shall have any personal liability or other personal obligation with respect to any payment, performance or observance of any amount, obligation or liability to be paid, performed or observed under this Agreement and all agreements related hereto or any of the representations, warranties, covenants, indemnifications or other undertakings of such party hereunder, if any, and each party agrees it shall not seek to obtain a judgment at law or equity against any officer, director, employee or agent of the other party, or against any of their respective heirs, administrators, executors, personal representatives, successors or assigns.

14.30 IRS Real Estate Sales Report. City and UPRR hereby appoint Title Company as, and Title Company agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Internal Revenue Code of 1986 Section 6045(e). Title Company shall prepare and file the informational return (IRS Form 1099-B) required by and otherwise comply with the terms of I.R.C. §6045(e). Title Company further agrees to indemnify and hold City, UPRR and the respective attorneys harmless from and against all claims, Costs, liabilities, fees, penalties or expenses resulting from Title Company's failure to file the appropriate reports and otherwise comply with the terms of the Internal Revenue Code.

14.31 Eminent Domain. City deems it proper and necessary, pursuant to Colorado law, to acquire the property being acquired pursuant to the Ped Bridge Project for public purposes, and represents that it has been authorized, empowered and directed to negotiate with UPRR to acquire such property for such public purposes. The parties acknowledge that UPRR intends to treat the transfer of such property as part of the consideration exchanged hereunder and as an involuntary conversion made under threat of condemnation pursuant to Section 1033 of the Internal Revenue Code of 1986, as amended. The parties agree that, in lieu of City's initiating eminent domain proceedings to acquire the property being acquired pursuant to the Ped Bridge Project for public purposes, and to avoid the cost and uncertainty of such litigation, such property will be acquired by City pursuant to the terms of the agreements being entered into in connection with the Ped Bridge Project.

**(Remaining page intentionally left blank)**

In Witness Whereof the Parties have executed this Agreement as of: \_\_\_\_\_.

CITY:

CITY AND COUNTY OF DENVER,  
a home rule city and Colorado municipal corporatic

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

ATTEST:

By: \_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk of  
the City and County of Denver

APPROVED AS TO FORM:

Denver City Attorney, attorney for the  
City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney


REGISTERED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Manager of Finance

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

UPRR:

UNION PACIFIC RAILROAD  
COMPANY,  
a Delaware corporation

By:   
Name: TONY K. LOVE  
Title: Assistant Vice President - Real Estate



THE UNDERSIGNED TITLE COMPANY AGREES TO ACT IN ACCORDANCE  
WITH THIS AGREEMENT.

TITLE COMPANY:

Stewart Title Guaranty Company

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

Name: \_\_\_\_\_

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

**EXHIBIT A**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Current Facilities Property** (see attached)

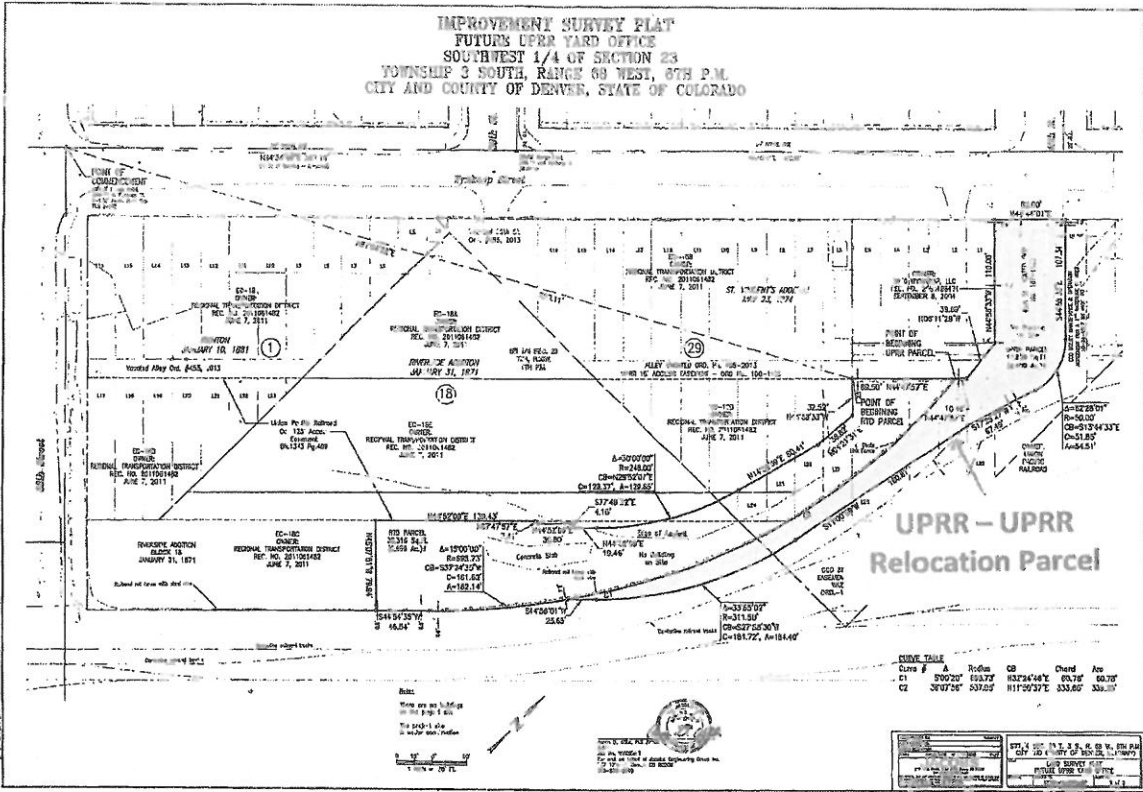


**EXHIBIT B**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**UPRR-UPRR Relocation Parcel** (see attached)

IMPROVEMENT SURVEY PLAT  
 FUTURE UPRR YARD OFFICE  
 SOUTHWEST 1/4 OF SECTION 23  
 TOWNSHIP 3 SOUTH, RANGE 69 WEST, 87E P.M.  
 CITY AND COUNTY OF DENVER, STATE OF COLORADO



**EXHIBIT C**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**RTD-UPRR Relocation Parcel** (see attached)

Date: December 17, 2013

DESCRIPTION

Being a portion of EC-18C and EC-18E conveyed by Special Warranty Deed recorded at Reception No. 2011061482, recorded June 7, 2011 lying in Block 29, ST VINCENT'S ADDITION recorded May 23, 1874, Block 18, RIVERSIDE ADDITION recorded January 31, 1871, and Wazee Street vacated by Ordinance 187-1925, all in the City and County of Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 23, Township 3 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more particularly described as follows:

COMMENCING at the 20 foot by 20 foot Range Point at 38<sup>th</sup> Street and Wynkoop Street (a 2-1/2" aluminum rock cap. LS 24942) WHENCE the 20 foot by 20 foot Range Point at 39<sup>th</sup> Street and Wynkoop Street (a #8 rebar) bears N44°54'49"E a distance of 397.18 feet (basis of bearing – assumed);

THENCE N61°04'22"E a distance of 720.11 feet to the westerly corner of Lot 28 of said Block 29 and the POINT OF BEGINNING;

THENCE the following four (4) courses coincident with the northwesterly and southeasterly lines of said EC-18C:

- 1) N44°47'57"E coincident with the northwesterly line of lots 28 through 31 inclusive of said Block 29 a distance of 89.50 feet;
- 2) Along the arc of a curve to the right, having a central angle of 36°07'56", a radius of 537.96 feet, a chord bearing of S11°50'37"W a distance of 333.66 feet, and an arc distance of 339.25 feet;
- 3) Along the arc of a curve to the right, tangent with the last described curve, having a central angle of 15°00'00", a radius of 695.73 feet, a chord bearing of S37°24'35"W a distance of 181.62 feet, and an arc distance of 182.14 feet;
- 4) S44°54'35"W tangent with the last described curve a distance of 46.54 feet;

THENCE N45°07'51"W a distance of 79.94 feet;

THENCE N44°52'09"E a distance of 139.43 feet;

THENCE N87°47'57"E a distance of 3.41 feet;

THENCE N44°52'09"E a distance of 30.00 feet;

THENCE S77°46'32"E a distance of 4.16 feet;

THENCE N44°52'09"E tangent with the following described curve a distance of 19.46 feet;

THENCE along the arc of a curve to the left, having a central angle of 30°00'00", a radius of 248.00 feet, a chord bearing of N29°52'07"E a distance of 128.37 feet, and an arc distance of 129.85 feet;

THENCE N14°52'09"E tangent with the last described curve a distance of 80.41 feet;

THENCE N04°21'31"E a distance of 38.82 feet;

THENCE N44°58'33"W coincident with the southwesterly line of said Lot 28 a distance of 32.52 feet to the POINT OF BEGINNING.

Containing 30,316 square feet (0.696 Acres), more or less.

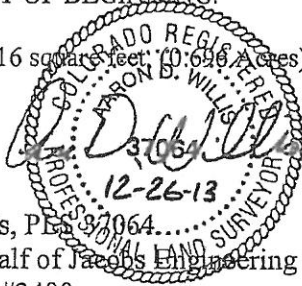
Prepared by:

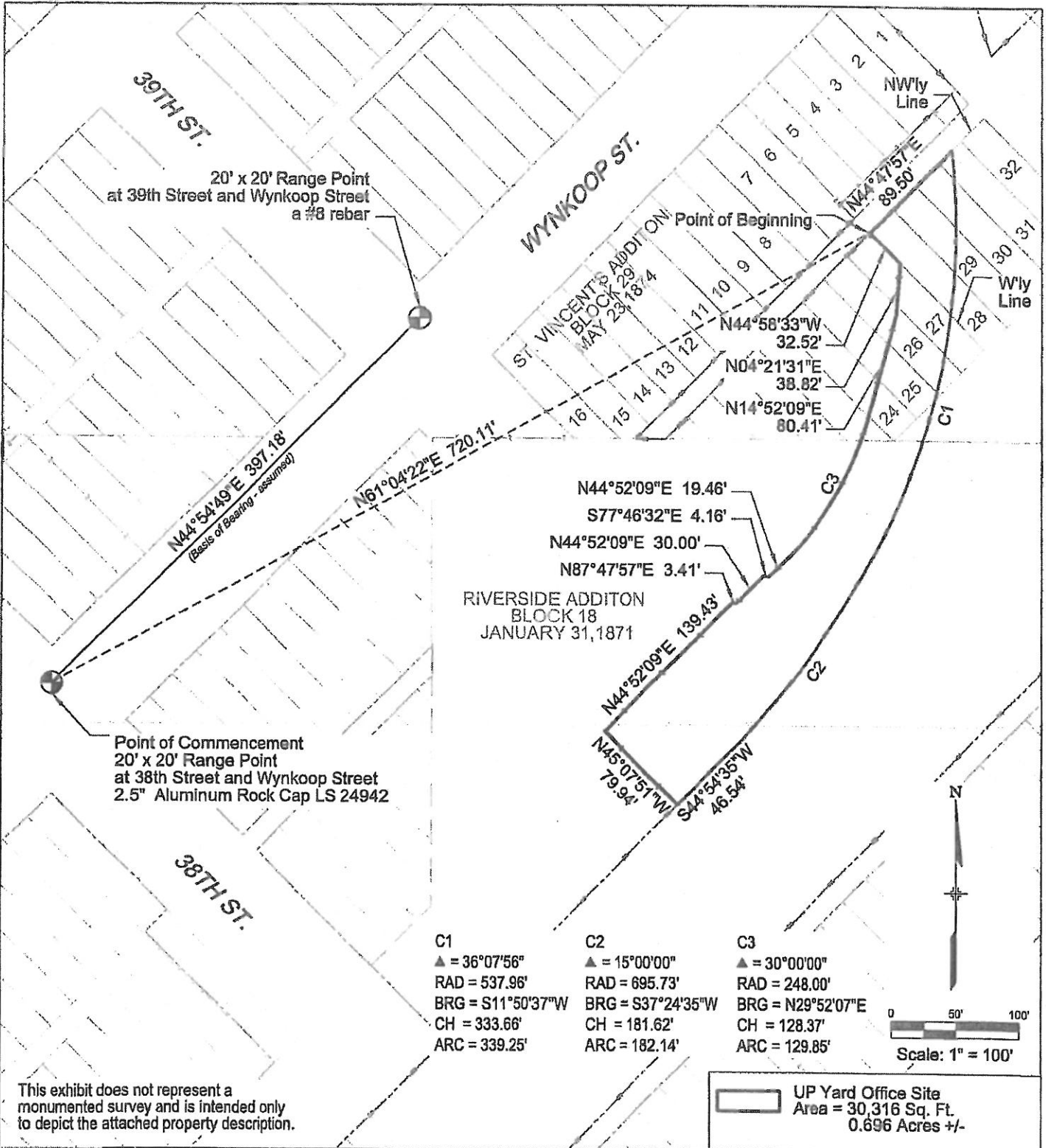
Aaron D. Willis, PLS 37064

For and on behalf of Jacobs Engineering Group Inc.

707 17<sup>th</sup> Street #2400

Denver, CO 80202





<b>C1</b> ▲ = 36°07'56" RAD = 537.96' BRG = S11°50'37"W CH = 333.66' ARC = 339.25'	<b>C2</b> ▲ = 15°00'00" RAD = 695.73' BRG = S37°24'35"W CH = 181.62' ARC = 182.14'	<b>C3</b> ▲ = 30°00'00" RAD = 248.00' BRG = N29°52'07"E CH = 128.37' ARC = 129.85'
---	---	---

This exhibit does not represent a monumented survey and is intended only to depict the attached property description.

JACOBS PROJECT NO.	WVXV72120
CLIENT PROJECT NO.	
REVISION DESCRIPTION	
DRAWN JSX	DATE 05-09-13 SCALE 1" = 100'
<b>JACOBS</b>	
707 17th Street, Suite 2100, Denver CO 80202	
THIS MATERIAL AND ANY ASSOCIATED ELECTRONIC DATA WAS PREPARED BY JACOBS FOR THE PROJECT INDICATED. ANY REUSE OR MODIFICATION WITHOUT THE WRITTEN CONSENT OF JACOBS SHALL BE AT THE SOLE RISK OF THE USER.	

Exhibit "A" - UP Yard Office Site City and County of Denver, Colorado SW 1/4 Sec. 23, T3S, R68W, 6th P.M.		
TITLE: FasTracks EAST CORRIDOR COMMUTER RAIL		
REVISION:	DRAWING NO. UP Yard Office.DGN	SHEET NO. 1 of 1



**EXHIBIT D**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Assignment and Assumption Agreement** (see attached)

## ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado ("Assignor"), hereby ASSIGNS AND TRANSFERS to UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignee") all of Assignor's right, title and interest in and to the leases, licenses, easements and other agreements listed on Exhibit B attached hereto (collectively, the "Assigned Agreements"), and all amendments thereto, only to the extent the Assigned Agreements affect the real property described on Exhibit A attached hereto (the "Property").

This Assignment and Assumption Agreement shall be binding on and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

This Assignment and Assumption Agreement may be executed in counterparts, and as so executed shall constitute one and the same agreement.

All exhibits attached to this Assignment and Assumption Agreement are incorporated herein for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

ASSIGNOR:

CITY AND COUNTY OF DENVER,  
a home rule city and municipal corporation of the State  
of Colorado

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

ATTEST:

By: \_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk of  
the City and County of Denver

APPROVED AS TO FORM:

Denver City Attorney, attorney for the  
City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Manager of Finance

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

ASSIGNEE:

UNION PACIFIC RAILROAD COMPANY, a  
Delaware corporation

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

EXHIBIT A TO ASSIGNMENT AND ASSUMPTION AGREEMENT

LEGAL DESCRIPTION

EXHIBIT B TO ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNED AGREEMENTS

**EXHIBIT E**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Intentionally Omitted**



**EXHIBIT F**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Bill of Sale** (see attached)

## Quitclaim Bill of Sale

THIS QUITCLAIM BILL OF SALE ("Bill of Sale"), dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, is from CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado ("City") to UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"). This Bill of Sale is being delivered pursuant to that certain 36<sup>th</sup> Street Yard Office Facility Property Agreement by and between City and UPRR dated as of \_\_\_\_\_, 2014 (the "Agreement"), pursuant to which City has agreed to convey and UPRR has agreed to acquire the real property legally described in Exhibit A attached hereto and made apart hereof located in the City and County of Denver County, Colorado (the "Property"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City hereby sells, assigns, transfers and quitclaims unto UPRR, its successors and assigns, all of City's rights, interests and titles, if any, in and to the personalty located on or at the Property and accepted by UPRR (the "Personal Property").

City quitclaims the Personal Property "As Is," "Where Is" and with "All Faults" and has not made and does not make any representations or warranties as to the physical condition, operation, fitness for a particular purpose, or any other matter with respect to the Personal Property.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, City has caused this Bill of Sale to be executed as of the date first above written.

CITY:

CITY AND COUNTY OF DENVER,  
a home rule city and municipal corporation of the State  
of Colorado

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

ATTEST:

By: \_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk of  
the City and County of Denver

APPROVED AS TO FORM:

Denver City Attorney, attorney for the  
City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

**Exhibit A**

(Attached to and made a part of the  
Quitclaim Bill of Sale dated as of \_\_\_\_\_, 20\_\_\_\_  
from City and County of Denver  
to Union Pacific Railroad Company)

**Property**

(see attached)

**EXHIBIT G**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Deed for RTD-UPRR Relocation Parcel (see attached)**

**AFTER RECORDING MAIL TO:**

Union Pacific Railroad Company  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179-1690  
Attn: Real Estate Department

**QUITCLAIM DEED**

**THIS DEED**, dated as of \_\_\_\_\_, 20\_\_\_\_, from **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation of the State of Colorado ("**Grantor**"), to **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("**Grantee**"), whose legal address is 1400 Douglas Street, Stop 1690, Omaha, NE 68179-1690:

**WITNESS**, that Grantor, for and in consideration of the sum of **TEN DOLLARS and no/100 Dollars, (\$10.00)** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, sell and **QUITCLAIM** unto Grantee, and Grantee's heirs and assigns, forever, all of Grantor's right, title, interest, claim and demand in and to the real property, together with any improvements thereon, located in the City and County of Denver and State of Colorado, described in Exhibit A, attached hereto and incorporated herein by reference (the "**Property**"). This conveyance of the Property is given and accepted subject to the permitted exceptions set forth on Exhibit B, attached hereto and incorporated herein by reference.

**TO HAVE AND TO HOLD** the Property, with all and singular appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of Grantor, either in law or in equity, to the only proper use, benefit and behoof of Grantee, and Grantee's heirs, successors and assigns, forever.

(Remainder of Page Intentionally Left Blank)





EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

PERMITTED EXCEPTIONS

**EXHIBIT H**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Intentionally Omitted (see attached)**

**EXHIBIT I**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Access Easement Agreement** (see attached)

RTD 10/23/14

After recording return to:  
Manager Real Property  
1560 Broadway, Denver, CO 80202

**PERMANENT NON-EXCLUSIVE ACCESS EASEMENT AGREEMENT  
(38<sup>TH</sup> & Wazee – UPRR Relocated Facilities Access)**

THIS PERMANENT NON-EXCLUSIVE ACCESS EASEMENT AGREEMENT ("Agreement") is made [•] ("Effective Date") by and between the REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado, whose legal address is 1600 Blake Street, Denver, Colorado 80202 ("Grantor" or "RTD") and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, whose legal address is 1437 Bannock Street, Denver, Colorado 80202 ("City"), and the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UPRR"). Collectively City and UPRR are "Grantee".

RTD operates a rail line known as the East Rail Line for mass transit purposes.

RTD owns property in the vicinity of 38th Street in the City and County of Denver, Colorado, as legally described and depicted in **Exhibit A**, attached hereto and incorporated herein ("RTD Property").

In connection with RTD's East Rail Line, the City intends to construct a pedestrian overpass and certain related facilities. The City's facilities will impact certain railroad facilities of UPRR. To accommodate UPRR, the City plans to relocate and construct certain replacement railroad facilities on property appurtenant to the RTD property, as legally described and depicted in **Exhibit B**, attached hereto and incorporated herein ("UPRR Property").

As part of the City's relocation of UPRR's facilities to the UPRR Property, the City will need to acquire permanent non-exclusive access to and from the UPRR Property for fire and emergency vehicles and UPRR will need to acquire secondary vehicle access, over and across the RTD property.

In consideration of the mutual promises contained herein and for the sum of \$10.00, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. GRANT**

- A. Subject to all the terms and conditions hereof, Grantor hereby grants the following easements (collectively, the "Easement") in, on, under, upon, over, through and across an access road to be built by RTD at its cost on a certain portion of the RTD Property legally described and depicted in **Exhibit C**, attached hereto and incorporated herein ("Easement Area"): (a) to the City and its successors and assigns, a perpetual, non-exclusive easement for the purposes of access for fire and emergency vehicles, and (b) to UPRR, and its successors and assigns, a perpetual, non-exclusive easement for the purpose of secondary access for vehicles that are unable to use the primary access due to their size to and from the UPRR Property.
- B. Grantor shall retain all rights to use, convey and enjoy the Easement Area that do not unreasonably interfere with Grantee's use and enjoyment of the Easement granted herein. The Easement shall be subject to existing interests, easements, leases, licenses and permits (if any) heretofore granted, reserved or held by Grantor, its predecessors in interest, or any other person or entity affecting any of the Easement Area. Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the RTD Property, nor with the needs and requirements of Grantor's tenants; provided that if Grantee uses the Easement for the purposes stated herein, such use shall not be deemed to unreasonably interfere with

Grantor's use.

- C. Grantor shall retain all rights to use, convey and enjoy the Easement Area not inconsistent with the Easement granted herein. Grantee shall be obligated to restore the surface of the Easement Area at Grantee's sole cost and expense, including the restoration of any Grantor permitted surface improvements located on or adjacent to the Easement Area that are removed, relocated, altered, damaged, or destroyed directly as a result of Grantee's use of the Easement.
- D. Grantee shall require its agents, contractors and subcontractors performing activities hereunder to comply with each of the terms and conditions of this Agreement and to acknowledge all rights reserved to Grantor hereunder.

#### ARTICLE 2. TERM OF EASEMENT AGREEMENT

The Easement set forth in this Agreement shall become effective upon execution by all parties as of the Effective Date.

#### ARTICLE 3. INITIAL CONSTRUCTION OF THE ACCESS IMPROVEMENTS

RTD will construct the access road in accordance with the 38<sup>th</sup> and Blake Station Site Development Plan approved by the City.

#### ARTICLE 4. RELOCATION OF EASEMENT AREA

If RTD reasonably determines that the Easement Area needs to be relocated to a new location on RTD's Property, in order for RTD's use of the Easement Area for facilities related to RTD's transit services, Grantor and Grantee shall use good faith efforts to accommodate such relocation, provided that following the relocation of the Easement Area it can still be used by Grantee for the purposes stated herein. The cost of any such relocation shall be allocated amongst Grantor and the City by separate agreement. If the Easement Area is so relocated, this Easement shall be amended to reflect the new location of the Easement Area, which new location shall be conveyed to Grantee at no cost, and all the terms, conditions and stipulations herein expressed shall apply to the new Easement Area, except as specifically modified by the parties.

#### ARTICLE 5. DIGGING AND BORING

Prior to performing any digging or boring activities on the Easement Area, Grantee shall determine if a telecommunications system or other utility is buried anywhere on or about the Easement Area in the location where Grantee will perform such digging or boring activities. If there is such a telecommunications facility or other utility, Grantee will inform the owner of such telecommunications system or other utility, and take such measures in concert with the owners(s) as are necessary so as not to damage such system or utility.

#### ARTICLE 6. NOTICES

Unless otherwise prescribed in this Agreement, any notices required to be given shall be given in writing and mailed by U.S. mail, first class postage prepaid, and addressed as follows:

If to Grantor:                   Regional Transportation District  
  1560 Broadway, Suite 650  
  Denver, Colorado 80202  
  Attn: Manager of Real Property

(303) 628-9000

With a copy to: Regional Transportation District  
2701 S. Elati Street  
Englewood, Colorado 80204  
Attn: Senior Manager for Commuter Rail Services

**In emergency: 303-299-3480**

With a copy to: Denver Transit Partners, LLC  
General Manager  
1670 Broadway, Floor 27  
Denver, Colorado 80202

**In emergency: (855) 324-5373**

If to City: City and County of Denver  
Manager, Public Works  
201 W. Colfax Ave., Dept. 608  
Denver, CO 80202

With a copy to: Denver City Attorney's Office  
201 W. Colfax, Dept. 1207  
Denver, CO 80202

If to UPRR: Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street – STOP 1690  
Omaha, NE 68179

With a copy to: Union Pacific Railroad Company  
Legal Department  
1400 Douglas Street – STOP 1580  
Omaha, NE 68179

The address to which any notice, demand, or other writing may be given may be changed by written notice given as above provided.

#### ARTICLE 7. NO WARRANTY

- A. Grantor does not grant nor purport to grant any right not specifically set forth herein. Permission for the Grantee or its contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Grantee as is procurement of any applicable regulatory permission or consent; provided that no additional regulatory permission or consent shall be required to be procured from Grantor except as expressly provided herein.
- B. The right to use the Easement Area granted hereunder is hereby contracted for and shall be granted with respect to the Easement Area in its "AS IS" physical condition without any



warranty, express or implied. This grant is subject to all other prior granted or reserved rights and interests in the Easement Area.

- C. Grantee specifically assumes all risk of loss, damage, or destruction to any tools, equipment, or materials, if any, that Grantee or its contractor stores on the Easement Area, whether the loss, damage or destruction results from accident, act of God, the elements, severe weather, theft or vandalism.

## ARTICLE 8. ENVIRONMENTAL OBLIGATIONS

Grantee shall not cause or knowingly permit any hazardous substance to be used, stored, generated, or disposed of on or in the Easement Area by Grantee, Grantee's agents, employees, contractors, or invitees. As used herein, "hazardous substance" means any substance that is defined as "toxic", "hazardous waste" or a "hazardous substance" or that is toxic, ignitable, reactive, or corrosive, and is regulated by any local government, the State of Colorado or the United States, including asbestos, asbestos containing material, polychlorobiphenyls ("PCB"), and petroleum.

## ARTICLE 9. GENERAL

1. Assignment. Grantee shall have the right to assign this Agreement and the rights granted hereunder upon the prior written consent of Grantor, which shall not be unreasonably withheld.

2. Agreement Binding. This Agreement and all of the covenants, terms and conditions herein contained shall be perpetual and shall constitute covenants running with the land so as to bind upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

3. Laws to Apply; Jurisdiction and Venue. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines govern this Agreement. Jurisdiction and venue for all disputes shall be in the county in which the Easement Area are located and Grantee expressly submits itself the jurisdiction thereof.

4. Amendment. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

5. Independent Contractors. It is expressly understood and agreed that Grantor and Grantee do not intend to be and shall not in any respect be deemed agents of each other, but shall be deemed to each to be an independent contractor.

6. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

7. Easement Appurtenant. This easement is an easement appurtenant benefiting the UPRR Property.

8. Liens. Grantee shall not permit any lien to be placed on the Easement Area arising from performance of work hereunder, and shall promptly cause any such lien to be removed.

9. Appropriation by City Council and RTD Board. Unless already appropriated as set forth herein, this Agreement does not commit any present funding by either the City or RTD. The obligations of the City and RTD under this Agreement shall extend only to monies appropriated

for the purpose of this Agreement by the RTD Board and/or Denver's City Council, as appropriate, subject to each entity's legally required budgeting, authorization, and appropriation process. The City and RTD acknowledge that they do not through this Agreement irrevocably pledge present cash reserved for payments in future years, and that this Agreement is not intended to create a multiple fiscal year direct or indirect debt or obligation of the City or RTD.

10. Inspection of Records.

The Parties agree that, at the cost of the requesting Party, any duly authorized representative of RTD or the City, including the City Auditor, or any internal or external auditor of the City or RTD shall, until the expiration of three (3) years after the final reconciliation or payment under this Agreement, have access to and the right to copy any books, documents, papers, and records involving transactions and work related to this Agreement.

11. No Discrimination in Employment. In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability.

12. Counterparts. This Agreement may be executed in counterparts. Signatures on separate originals shall constitute and be of the same effect as signatures on the same original. Electronic and faxed signatures shall constitute original signatures.

13. No Joint and Several Liability. The Parties acknowledge and agree that each Grantee shall be responsible for its obligations and responsibilities hereunder (including without limitation responsibility for maintenance, repair and damage to the Easement Area), and if a Grantee fails to perform its obligations and responsibilities hereunder the other Grantee shall not be jointly and severally liable for such failure.

[Signature Pages to Follow]



IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: \_\_\_\_\_

CITY AND COUNTY OF DENVER:

ATTEST:

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

By: \_\_\_\_\_  
Debra Johnson,  
Clerk and Recorder Ex-Officio Clerk  
of the City and County of Denver

APPROVED AS TO LEGAL FORM:  
A. Scott Martinez, Attorney for  
the City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED

By: \_\_\_\_\_  
Manager of Finance

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

REGIONAL TRANSPORTATION DISTRICT  
a political subdivision of the State of Colorado

By: \_\_\_\_\_  
Phillip A. Washington  
General Manager

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

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2013, by as \_\_\_\_\_ for Regional Transportation District, as the Grantor.

Witness my hand and official seal.

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

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

\_\_\_\_\_  
Address

Approved as to legal form for RTD:  
By: \_\_\_\_\_

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

ATTEST:

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

By: \_\_\_\_\_  
Assistant Secretary

Name:

Title

STATE OF NEBRASKA )  
) ss.

\_\_\_\_\_ )  
COUNTY OF

On this \_\_\_\_\_

day of

, 20

, before me, a Notary

Public in and for said County and State, personally appeared

\_\_\_\_\_ and

who are the

\_\_\_\_\_ and Assistant Secretary, respectively, of UNION  
PACIFIC RAILROAD COMPANY, a Delaware corporation, and who are personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the persons whose names are  
subscribed to in the within instrument, and acknowledged to me that they executed the same in  
their authorized capacities, and that by their signatures on the instrument the persons, or the  
entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(Seal)

**Exhibit A to Easement Agreement  
RTD PROPERTY**



**Exhibit B to Easement Agreement  
UPRR PROPERTY**

**Exhibit C to Easement Agreement  
EASEMENT AREA**

**EXHIBIT J**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Intentionally Omitted**

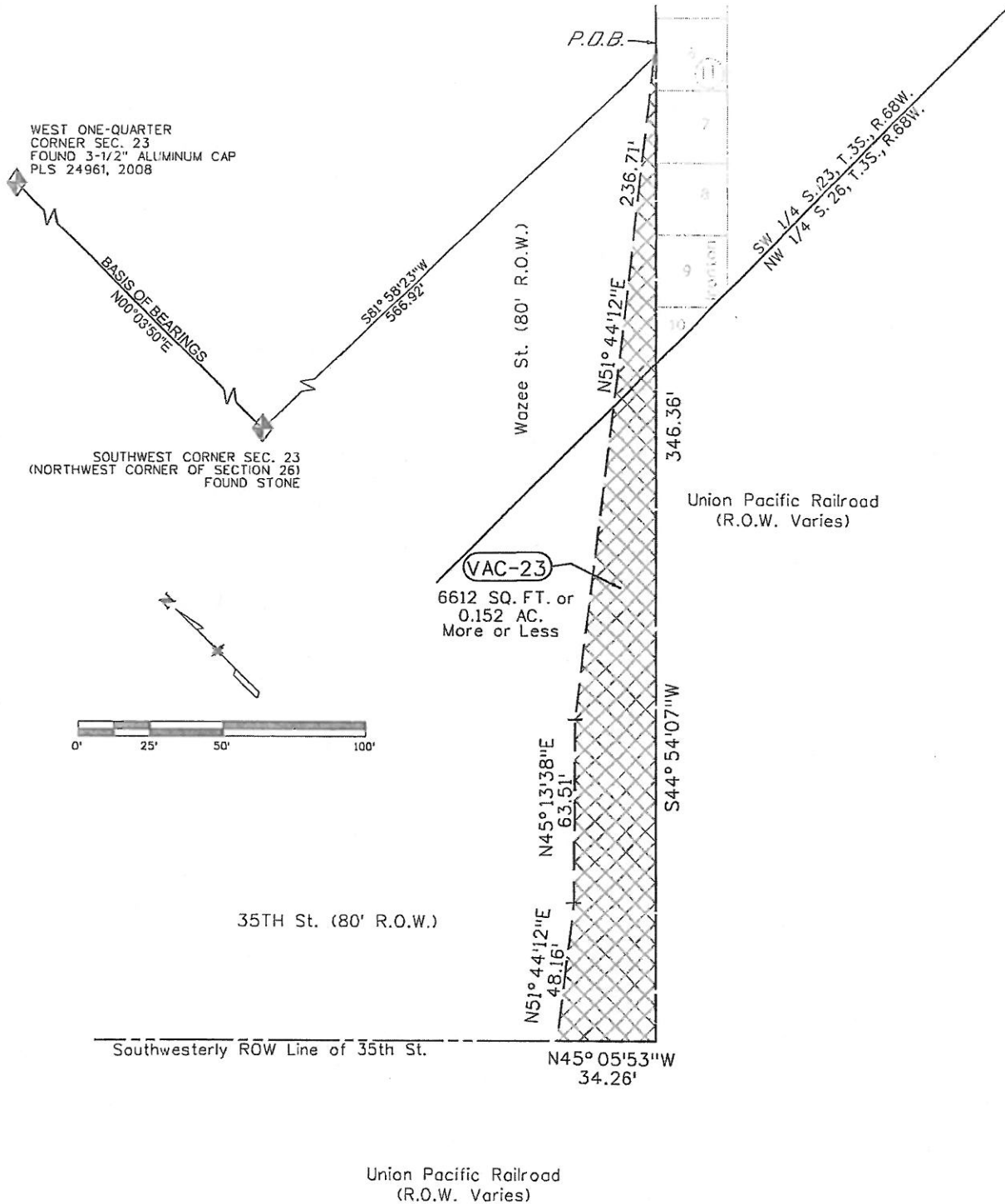
**EXHIBIT K**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Wazee Vacation Parcel Legal Description (see attached)**

# EXHIBIT K

THIS EXHIBIT IS A GRAPHIC DEPICTION OF THE PARCEL DESCRIBED ON THE ATTACHED LEGAL DESCRIPTION AND IS NOT INTENDED TO INCLUDE SURVEY PLAT REQUIREMENTS AS DEFINED IN CRS 38-51-106.



## EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

Job No.: 129-0003  
 Scale: 1" = 50'  
 Date: October 13, 2014  
 Page 2 of 2  
 Drawn By: SDB

RIGHT-OF-WAY VACATION NO. VAC-23  
 SECTIONS 23 & 26, T. 3 S., R. 68 W., 6TH P.M.  
 CITY & COUNTY OF DENVER, COLORADO

**105WEST**  
 INCORPORATED  
 2140 S. Ivanhoe St., STE G5  
 Denver, CO 80222

**EXHIBIT "K"**  
**Right-of-Way Vacation Number: VAC-23**  
**PAGE 1 OF 2**  
**OCTOBER 13, 2014**

A TRACT OF LAND CONTAINING 6,612 SQUARE FEET, MORE OR LESS, LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 23 AND NORTHWEST ONE-QUARTER OF SECTION 26, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID TRACT MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A POINT ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF WAZEE ST. (80' R.O.W.), FROM WHENCE THE SOUTHWEST CORNER OF SAID SECTION 23 BEARS S81°58'23"W, A DISTANCE OF 566.92 FEET;

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF WAZEE ST. (80' R.O.W.) S44°54'07"W, A DISTANCE OF 346.36 FEET TO THE INTERSECTION OF SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF WAZEE ST. WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF 35<sup>TH</sup> ST. (80' R.O.W.);

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 35<sup>TH</sup> ST. (80' R.O.W.) N45°05'53"W, A DISTANCE OF 34.26 FEET;

THENCE DEPARTING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 35<sup>TH</sup> ST., N51°44'12"E, A DISTANCE OF 48.16 FEET;

THENCE N45°13'38"E, A DISTANCE OF 63.51 FEET;

THENCE N51°44'12"E, A DISTANCE OF 236.71 FEET TO SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF WAZEE ST. (80' R.O.W.), AND THE **POINT OF BEGINNING**.

THE ABOVE DESCRIBED PROPERTY CONTAINS 6,612 SQUARE FEET OR 0.152 ACRES, MORE OR LESS.

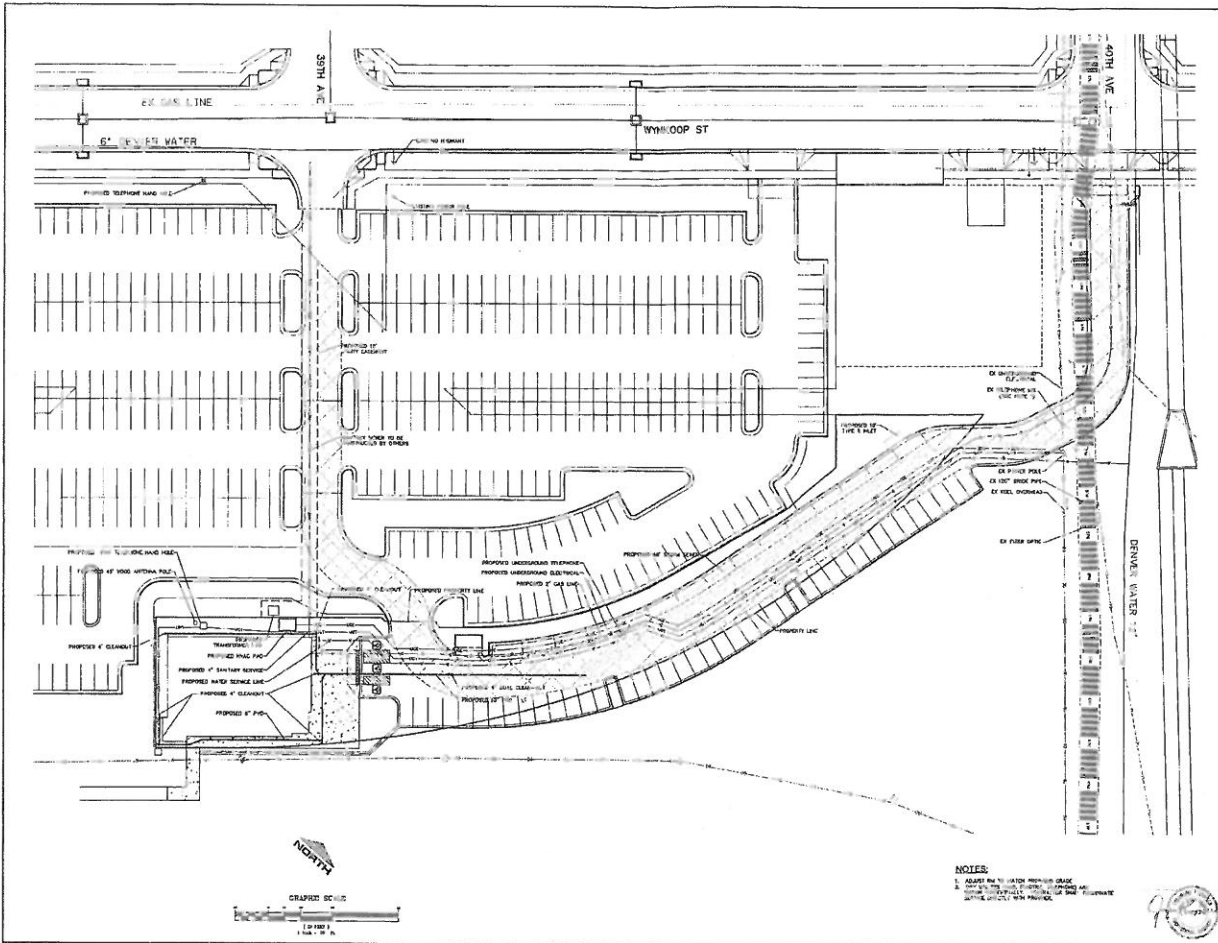
**BASIS OF BEARINGS:** ALL BEARINGS ARE BASED ON A LINE BETWEEN THE SOUTHWEST CORNER OF SECTION 23, T.3S., R.68W., 6<sup>TH</sup> P.M. (FOUND STONE) AND THE WEST ONE-QUARTER CORNER OF SECTION 23, T.3S., R.68W., 6<sup>TH</sup> P.M. (FOUND 3-1/2" ALUMINUM CAP STAMPED "PLS 24961, 2008) HAVING A BEARING OF N00°03'50"E.

PREPARED BY: RICHARD D. MUNTEAN, CO PLS 38189  
FOR AND ON BEHALF OF:  
105 WEST, INC.  
2140 S. IVANHOE ST., STE G5  
DENVER, CO 80222

**EXHIBIT L**

(Attached to and made a part of  
36<sup>th</sup> Street Yard Office Facility Property Agreement)

**Depiction of Sanitary Sewer Easement Line (see attached)**



**ASPECTIVE**  
 3811 Carlisle Street  
 Denver, Colorado 80202  
 Phone 378-8474  
 Fax 378-8474

**UNION PACIFIC**  
 Engineering & Planning, Inc.  
 1700 Broadway  
 Denver, Colorado 80202  
 Phone 733-1234  
 Fax 733-1234

**UNION PACIFIC RAILROAD YARD OFFICE**  
 3880 WYNKOOP STREET, DENVER, COLORADO

PROJECT NO. 011122-00  
 DRAWING NO. 011122-00  
 DATE: 05/28/94  
 REVISIONS

BY: [Signature]  
 CHECKED BY: [Signature]  
 DATE: 05/28/94  
 SCALE: 1/8" = 1'-0"  
**C1.3**

**NOTES:**  
 1. ADJUST PER TO MATCH NEIGHBOR GRADE  
 2. SEE ALL THE OTHER DRAWINGS IN THIS PROJECT FOR  
 ALL THE OTHER UTILITY LINES AND STRUCTURES