

## **AGREEMENT TO EXCHANGE PROPERTY**

THIS AGREEMENT TO EXCHANGE PROPERTY ("**Agreement**") is made and entered into as of the Effective Date (defined below) by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the "**City**"), and ACM PARK HILL JV VII LLC, a Delaware limited liability company registered and authorized to do business in Colorado ("**ACM**"), whose address is 4100 East Mississippi Avenue, Suite 500, Glendale, Colorado 80246. The City and ACM may be referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**".

### RECITALS

WHEREAS, ACM is the owner of real property commonly known as the Park Hill Golf Course with an address of 4141 East 35<sup>th</sup> Avenue in Denver, Colorado, which property is more particularly described and depicted on **Exhibit A** attached hereto and incorporated herein by reference ("**ACM Property**"); and

WHEREAS, the City is the owner of a parcel of vacant land containing approximately 320 acres located in Adams County, Colorado, which land is depicted on **Exhibit B** attached hereto and incorporated herein by reference ("**Vacant Land**"), and which land is in the vicinity of the Denver International Airport ("**DEN**");

WHEREAS, the Vacant Land includes real property containing approximately 145.0 acres as more particularly described and depicted on **Exhibit C** attached hereto and incorporated herein by reference ("**City Property**"); the ACM Property and the City Property may each be referred to individually herein as a "**Property**" and collectively as the "**Properties**"; and

WHEREAS, the City and ACM desire to enter into this Agreement so the Properties may be simultaneously exchanged in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into and form a part of this Agreement, and in consideration of the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Transfer of City Property. Pursuant and subject to the terms and conditions of this Agreement, at Closing (defined below), the City agrees to transfer, sell, and convey to ACM, and

ACM agrees to accept and receive from the City, the City Property, which conveyance shall be by a bargain and sale deed substantially in the form attached hereto as **Exhibit D** and incorporated herein by reference ("**City B&S Deed**"). Any modifications to the City B&S Deed from the form attached hereto as **Exhibit D** shall require the approval of the City's Director of Real Estate or her designee ("**Director**"). As reflected in the City B&S Deed, the conveyance of the City Property shall include the City's interest, if any, in and to (a) all easements, rights of way and vacated roads, streets and alleys appurtenant to the City Property; (b) all buildings, fixtures and improvements on the City Property; (c) all utility taps, licenses, permits, contract rights, and warranties and guarantees associated with the City Property; (d) any and all mineral rights, including without limitation sand, gravel, coal, and oil, gas and other hydrocarbons in, under, and that may be produced from the City Property; and (e) all water rights, if any, owned by the City appurtenant to or otherwise associated with the City Property.

2. Transfer of ACM Property. Pursuant and subject to the terms and conditions set forth in this Agreement, at Closing, ACM agrees to transfer, sell, and convey to the City, and the City agrees to accept and receive from ACM, the ACM Property, which conveyance shall be by a bargain and sale deed substantially in the form attached hereto as **Exhibit E** and incorporated herein by reference ("**ACM B&S Deed**", the City B&S Deed and the ACM B&S Deed may be referred to individually herein as a "**Deed**"). Any modifications to the ACM B&S Deed from the form attached hereto as **Exhibit E** shall require the approval of the Director. As reflected in the ACM B&S Deed, the conveyance of the ACM Property shall include ACM's interest, if any, in and to (a) all easements, rights of way and vacated roads, streets and alleys appurtenant to the ACM Property; (b) all buildings, fixtures and improvements on the ACM Property; (c) all utility taps, licenses, permits, contract rights, and warranties and guarantees associated with the ACM Property; (d) any and all mineral rights, including without limitation sand, gravel, coal, and oil, gas and other hydrocarbons in, under, and that may be produced from the ACM Property; and (e) all water rights, if any, owned by ACM appurtenant to or otherwise associated with the ACM Property.

3. Escrow; No Purchase Price or Earnest Money Deposit. The effective date of this Agreement ("**Effective Date**") shall be the date the City delivers a fully executed copy of this Agreement to ACM. Promptly after the Effective Date, the City shall deliver a fully executed copy of this Agreement to Land Title Guarantee Company ("**Title Company**"), attn: Derek Greenhouse

(“**Escrow Agent**”), 3033 East First Avenue, Suite 600, Denver, Colorado 80206. Escrow Agent shall cause an escrow to be opened for the receipt and administration of funds and documents to be provided to Escrow Agent under this Agreement (“**Escrow**”), and this Agreement shall constitute escrow instructions to Escrow Agent and Title Company. Notwithstanding the foregoing, the Parties have determined through appraisals and/or other valuations that the fair market value of the ACM Property is substantially similar to the fair market value of the City Property, and accordingly, neither Party shall be required to make an earnest money deposit into Escrow or pay a purchase price for the Property to be acquired by such Party under this Agreement.

4. Investigations and Condition of Property.

a. Investigations. Commencing on the Effective Date and continuing until 5 p.m. mountain time on the date that is ninety (90) days after the Effective Date (“**Due Diligence Period**”), the City and ACM, together with their respective employees, consultants, contractors and designees (collectively, the “**Representatives**”), shall have the right to perform, at the performing Party’s sole cost and expense, whatever investigations, tests and inspections the performing Party desires to conduct upon or with respect to the applicable Property to be acquired by it under this Agreement (collectively, “**Investigations**”). Such Investigations shall be of all matters relevant to the acquisition, financing, ownership, operation, and marketability of the applicable Property, including without limitation all leases and/or other agreements affecting the Property, the zoning of the Property, the status of title to the Property, and the physical and environmental condition of all land, improvements, fixtures, and any personal property comprising all or any portion of the Property. Without limitation of the foregoing, the Parties and their respective Representatives shall have the right to perform, at such Party’s sole cost and expense, environmental audits and other environmental tests on and about the ACM Property or City Property, as applicable, and any buildings or other structures located thereon to identify any existing or potential environmental problems located in, on, or under such Property and/or such buildings or other structures, including without limitation the presence of asbestos, lead, and/or any other hazardous waste, hazardous substances or toxic substances as such terms are defined or commonly understood to mean under applicable federal, state, and/or local laws, rules or regulations. **ACM hereby discloses to the City and the City hereby acknowledges that the buildings on the ACM Property are old and do or may contain asbestos and potentially lead and other hazardous and toxic substances.** Notwithstanding anything in the foregoing to the

contrary, (a) all physical Investigations of the applicable Property shall be conducted during normal business hours or as otherwise agreed upon by the Parties and only after the performing Party has provided the other Party with at least three (3) business days' prior written notice of the Investigations to be performed so the other Party and/or its Representatives can be present during such Investigations; (b) no invasive Investigations of the applicable Property that are in addition to a phase I and/or other customary environmental audits or tests shall be performed without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; (c) each Party and/or its respective Representatives shall be required to repair any damage to the applicable Property that directly results from the Investigations performed by such Party and/or its Representatives upon such Property, and each Party shall pay any lien or other claims, including without limitation claims for personal injury or property damage, that directly result from the Investigations performed by such Party and/or its Representatives, provided however, in no event shall either Party be responsible or liable solely for the results, findings, and/or discoveries of or associated with its Investigations; and (d) ACM shall defend, indemnify, and hold harmless the City against and from any claims, including without limitation claims for personal injury or property damage, that directly result from the Investigations performed by ACM and/or its Representatives upon the City Property, and prior to any such Investigations being performed, ACM shall provide the City with a certificate of insurance evidencing commercial general liability coverage in the amount of at least \$2,000,000.00, with the City being named as an additional insured (for purposes of clarity, the Parties acknowledge the City, as a governmental entity that is self-insured, cannot agree to reciprocal defense, indemnification, hold harmless and insurance covenants). The provisions of this paragraph shall survive Closing or any earlier termination of this Agreement.

b. Condition of Property. Subject to each Party's right to perform Investigations as provided above, and except for the representations, warranties, covenants, and obligations of the Parties expressly stated in this Agreement or in any documents to be delivered at Closing, each Party agrees that its acceptance of the Property acquired by it on the Closing Date (defined below) shall be on an "AS IS" "WHERE IS" basis, without representation or warranty, express or implied, with each Party acknowledging that it has inspected or has had the right to inspect to its satisfaction the Property it is acquiring on the Closing Date.



5. Termination or Continuation of Exchange. Prior to the expiration of the Due Diligence Period, either Party may terminate this Agreement at any time, for any or no reason, by delivering written notice of its election to terminate (“**Termination Notice**”) to the other Party and to Escrow Agent, in which event neither Party shall have any further rights or obligations hereunder except those which survive termination as expressly provided in this Agreement. If either Party does not sign and deliver a Termination Notice to the other Party prior to the expiration of the Due Diligence Period, then this Agreement shall automatically continue and the Parties shall proceed to Closing.

6. Title.

a. Matters Not Shown by Public Records. If not already provided, within ten (10) business days after the Effective Date, each Party shall deliver to the other Party accurate and complete copies of all leases and surveys within the disclosing Party’s possession or control pertaining to the Property it is conveying, and shall disclose to the other Party all easements, liens or other title matters not shown by the public records nor contained in the Title Documents (defined below) of which the disclosing Party has actual knowledge (collectively, the “**Off-Record Matters**”). The Off-Record Matters to be disclosed shall include, without limitation, any service contracts relating to the ownership, operation, use, occupancy, or maintenance of the applicable Property to be conveyed (collectively, the “**Service Contracts**”), all of which Service Contracts shall be terminated by the applicable Party prior to Closing unless otherwise requested by the other Party prior to the expiration of the Due Diligence Period. Each Party shall have the right to inspect the Property to be acquired to determine if any third party has any right in such Property as a result of Off-Record Matters. Any objections either Party has to any Off-Record Matters shall be resolved during the Due Diligence Period, failing which the objecting Party shall have the right to terminate or cause to be terminated this Agreement as provided in Section 5 of this Agreement.

b. Title and Survey Review. If it has not already done so, each Party shall obtain a title commitment issued by Title Company for the Property it is acquiring (such commitment, together with all documents referenced in the commitment, are collectively referred to as the “**Title Documents**”), and each Party shall have the right, but not the obligation, to have an updated or new survey prepared for the Property it is acquiring (“**Survey**”). If either Party has any objections to the Title Documents or any Survey of the Property it is acquiring, it shall promptly provide written notice of same to the other Party, after which the Parties shall cooperate

in good faith, but without obligation of either Party to incur expenses in excess of \$10,000.00 or to commence litigation against a third party, to cause such objections to be resolved. If any objections are not resolved during the Due Diligence Period, the objecting Party shall have the right to terminate or cause to be terminated this Agreement as provided in Section 5 of this Agreement.

c. Title and Survey Costs. Each Party shall bear the costs of any Title Commitments or Surveys it obtains for the Property it is acquiring, as well as the costs of any title policy to be issued by Title Company at or after Closing for the Property such Party is acquiring, including without limitation the costs of any extended coverage and/or endorsements to such policy (each, a “**Title Policy**”).

d. No New Title or Survey Matters without Consent. Each Party agrees that from the Effective Date of this Agreement until Closing, such Party shall not execute or record or cause to be executed or recorded any leases, agreements, or other matters affecting title to the Property it owns without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. If any Party causes a lease, agreement, or other matter to be executed and/or recorded in violation of the foregoing covenant, the other Party shall have the right to (i) terminate or cause to be terminated this Agreement as provided in Section 5 of this Agreement if such violation is discovered during the Due Diligence Period, (ii) terminate this Agreement upon written notice to the violating Party if such violation is discovered after the Due Diligence Period and is not cured prior to Closing, or (iii) exercise such rights and remedies as are provided at law or in equity if the violation is not discovered until after Closing, which rights and remedies shall survive Closing. Subject to the foregoing and any other rights or remedies expressly provided to a Party under this Agreement, including without limitation those relating to a failure of Closing conditions or based upon an uncured default by the other Party, the failure of a Party to deliver a Termination Notice prior to the expiration of the Due Diligence Period shall be conclusively deemed to be such Party’s acceptance of all Off-Record Matters and all matters disclosed in the Title Documents and/or any Survey with respect to the Property to be acquired by such Party.

7. Entitlements and Approvals.

a. Generally. During the Due Diligence Period, either Party shall have the right to investigate zoning, building, and other development and entitlement matters relating to the

Property such Party is acquiring. Upon reasonable request from the other Party during the Due Diligence Period, and provided such request will not result in any liability or expense to the Party to which the request is directed and will not result in a delay of Closing, each Party agrees to execute such documents and take such actions as are commercially reasonable and within its control to assist the requesting Party in obtaining the necessary entitlements and approvals to enable such Party to proceed with the Intended Development (defined in Section 7.c. below) of the Property it is acquiring, it being acknowledged and agreed by the Parties that the City shall not be required to execute any documents or take any actions (i) that are or may be contrary to the City Charter or any other codes, laws, or requirements which are applicable to the City, (ii) that are subject to the jurisdiction of or otherwise involve requirements or approvals of another jurisdiction, including without limitation Adams County, and/or (iii) unless and until such documents or actions have been approved by City Council and/or DEN when such approval is required by the City Charter or other applicable codes, laws, or requirements. Notwithstanding the foregoing, except as otherwise expressly provided in this section and/or in Section 10 below, the obligations of each Party to convey and accept its respective Property as provided in this Agreement shall not be contingent upon any zoning, building, or other development or entitlement matters being resolved or approved, and each Party agrees its sole right and remedy if any such entitlements and approvals are not obtained is to terminate or cause to be terminated this Agreement as provided in Section 5 of this Agreement. ACM hereby acknowledges that (a) the City Property is and will be subject to all applicable local land use regulations, and (b) pursuant to such regulations, ACM may be required to grant, without consideration, easements to local jurisdictions to permit public rights-of-way for roads and trails. Except as otherwise expressly provided in this section and/or in Section 10 below, the failure of either Party to provide a Termination Notice prior to the expiration of the Due Diligence Period shall be conclusively deemed to be such Party's acceptance of all zoning, building, and other development and entitlement matters relating to the Property such Party is acquiring.

b. Rezoning of ACM Property Prior to Closing. Although not a condition to Closing, the Parties agree that, in connection with the City's intention to develop the ACM Property into a park after Closing, the City shall have the right, prior to Closing, to cause the zoning for the ACM Property to be changed from OS-B to OS-A. While such rezoning of the ACM Property shall be at the sole cost and expense of the City, ACM agrees it will execute such

reasonable documents and take such other actions as are reasonably necessary in relation to such rezoning. In the event such rezoning has occurred and this Agreement is terminated for any reason prior to Closing, then the City and ACM each agrees to execute such documents and take such other actions as are reasonably necessary to cause the zoning to be reverted from OS-A to OS-B, which rezoning shall be at the sole cost and expense of the City unless the termination of this Agreement is due solely to the uncured default of ACM, in which event the rezoning shall be at ACM's sole cost and expense. The provisions of the foregoing sentence shall survive the termination of this Agreement.

c. Post-Closing Matters. The Parties acknowledge that, after Closing, the City intends to develop the ACM Property into a park, and ACM intends to develop any combination of warehouse space, industrial space, data center space, and manufacturing space on the City Property (the intended development by each Party is referred to as the "**Intended Development**"). After Closing, each Party covenants and agrees that it shall not, and it shall not permit any of its related or affiliated persons, entities, or agencies under its control (it being acknowledged that the entities and agencies of the City include, without limitation, DEN, which manages, operates, and controls Denver International Airport under the oversight of the City and County of Denver Department of Aviation) to, (i) oppose (including without limitation before any governmental authorities or in any other public forum or media) or propose modifications to the other Party's Intended Development of the Property it is acquiring under this Agreement; (ii) advise others to oppose or seek to modify the other Party's Intended Development of the Property it is acquiring under this Agreement; (iii) voluntarily initiate, aid, request, file, fund, or participate in, any proceedings in opposition or proposing modifications to the other Party's Intended Development of the Property it is acquiring under this Agreement or any approvals issued therefor; or (iv) in connection with ACM's Intended Development of the City Property, object to any building heights allowed by the Federal Aviation Administration ("**FAA**"). The City acknowledges that, in connection with ACM's Intended Development of the City Property, ACM will require one or more non-exclusive utility easements be granted by the City across portions of the Vacant Land owned by the City, including without limitation water, storm water and sanitary sewer easements (collectively, the "**City Easement**"), and provided the City Easement will not materially adversely impact the City's intended development, use and/or value of the Vacant Land owned by it, the City will request approval from the City Council to grant such easements in accordance with the City's



usual processes and procedures and in accordance with the City Charter and any other applicable codes, laws, and requirements. Notwithstanding anything to the contrary contained in this Agreement, the City granting the City Easement shall be a condition of Closing and the City Easement will be recorded after the City B&S Deed at the Closing, unless the City has previously granted the City Easement in connection with the short plat referenced in Section 10.h below. The terms and conditions of this paragraph shall expressly survive the Closing.

8. Representations and Warranties. On the Effective Date and again on the Closing Date, each Party represents and warrants to the other Party that:

a. It has the requisite power and authority to execute and deliver this Agreement and the related documents to which such Party is a signatory;

b. The execution and delivery of this Agreement by such Party has been duly authorized by all requisite action(s) and creates valid and binding obligations of such Party enforceable in accordance with its terms, subject to the terms of this Agreement and subject to the effect of general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing, the possible unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law, and subject to or limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors;

c. To the actual knowledge of the Director with respect to the City Property, and to the actual knowledge of ACM's principals, Andrew R. Klein and Mark Witkiewicz, with respect to the ACM Property, neither the execution and delivery of this Agreement nor the consummation of the exchange of the Properties contemplated hereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree or other restriction of any governmental authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument or other arrangement to which such Party is bound;

d. It is authorized to execute this Agreement on behalf of its officers, directors, representatives, employees, subsidiaries, affiliates, members/shareholders, agents, trustees, beneficiaries, attorneys, insurers, successors, predecessors and assigns. Each person who signs this Agreement in a representative capacity represents that he or she is duly authorized to do so;

e. It has not sold, assigned, granted or transferred to any other person, natural or corporate, any chose in action, demand or cause of action encompassed by this Agreement; and

f. IT IS FREELY AND VOLUNTARILY ENTERING INTO THIS AGREEMENT UNCOERCED BY ANY OTHER PERSON AND THAT IT HAS READ THIS AGREEMENT AND HAS BEEN AFFORDED THE OPPORTUNITY TO OBTAIN THE ADVICE OF LEGAL COUNSEL OF ITS CHOICE WITH REGARD TO THIS AGREEMENT AND UNDERSTANDS THE SAME.

9. Pre-Closing Covenants and Rights.

a. Pre-Closing Covenants of Both Parties. From the Effective Date until the Closing or earlier termination of this Agreement, each Party agrees that (i) it shall operate and maintain the respective Property it owns in substantially the same manner as it is being operated and maintained on the Effective Date of this Agreement; (ii) as further provided above in this Agreement, it shall not execute or record or cause to be executed or recorded any leases, agreements, or other matters affecting title to the Property it owns without the prior written consent of the other Party; (iii) it shall not enter into any contracts or commitments that will survive Closing without the prior written consent of the other Party; and (iv) it shall either terminate or keep in force and effect any Service Contracts with respect to its Property as directed by the other Party at least thirty (30) days prior to the Closing Date, as further provided above in this Agreement.

b. Pre-Closing Rights of City. Subject to the provisions of this paragraph, the City and/or its Representatives shall have the right, but not the obligation, to enter upon the ACM Property prior to Closing to perform clean-up, repair, and maintenance work in preparation for the City's acquisition of such Property, which work may include, but shall not be limited to, picking up and removing trash; mowing and/or removing dead or cut grass; mowing and/or removing living or dead weeds; removing dead or dangerous trees; trimming and/or removing tree leaves and branches; securing buildings and removing or remedying dangerous conditions in or about such buildings; removing asphalt and concrete paths, signs, ball washers and other non-building property and improvements associated with the use of the ACM Property as a golf course; and such other clean-up, repair, and maintenance work as the City reasonably deems necessary to ready the ACM Property for the City's intended use as a park. Notwithstanding the foregoing, the City's right to access and perform work upon the ACM Property as provided in this paragraph is subject to the following terms and conditions: (i) the City shall provide ACM with at least three (3) business days' prior written notice of the work to be performed, and any reasonable objections to such work shall be resolved as promptly as possible by the good faith negotiations of the Parties,

provided that no such work shall be performed until any such objection(s) have been resolved; (ii) ACM and/or its Representatives shall have the right to be present and to observe any such work that is performed; (iii) any such work to be performed shall be at the sole cost and expense of the City, and the City shall not have any claims for payment or reimbursement from ACM; (iv) except to the extent caused by or arising out of the negligence or willful misconduct of ACM or ACM's Representatives (each an "ACM Party" and collectively the "ACM Parties"), the City assumes all risks related to any entry upon ACM's Property by the City and/or its Representatives, including without limitation damage to property and injury or death to persons in, upon or about ACM's Property, and the City hereby waives all claims in respect thereof against ACM and/or the ACM Parties; (v) the City shall pay any lien or other claims, including without limitation claims for personal injury or property damage, that directly result from any work performed under this paragraph on the ACM Property by the City and/or its Representatives; and (vi) if Closing fails to occur for any reason, the City shall be required to repair any damage to the ACM Property that directly results from any work performed by the City and/or its Representatives under this paragraph and that materially and adversely affects the pre-work condition of the Property (including, by way of example and not limitation, any damage to the irrigation system on and under the ACM Property), it being acknowledged and agreed by the Parties that the foregoing shall not require the City and/or its Representatives to remove any improvements made to the ACM Property or to restore the ACM Property to its pre-work condition unless any such improvements or change in condition materially and adversely affects the use of the ACM Property. In addition to and without limitation of the foregoing, upon written request from the City, the Parties shall negotiate in good faith to cause a lease agreement to be executed and delivered prior to Closing by which ACM shall lease to the City, for a \$10 rental rate, all or a portion of the ACM Property for development by the City into a park, provided that any such rental agreement shall immediately and automatically terminate upon Closing or termination of this Agreement. The foregoing rights and obligations of the Parties under this paragraph shall survive Closing or any earlier termination of this Agreement.

10. Closing Conditions. The obligation of each Party to close the exchange of the Properties contemplated by this Agreement is subject to the satisfaction of the following conditions on or prior to the Closing Date:

a. Each Property is to be conveyed and acquired substantially simultaneously at the same Closing, such that on the Closing Date, Escrow Agent shall have in its possession all funds and documents, and each Party shall have taken all actions, as are required under this Agreement to cause each Property to be conveyed and acquired on the same date and at substantially the same time.

b. Any existing deed(s) of trust, and all monetary liens which encumber a Property as of the Closing Date and are not the result of the other Party's actions or omissions shall be paid by the owner of such Property prior to Closing so that, at Closing, the Property is conveyed to the other Party free from all such deed(s) of trust and monetary liens.

c. The City shall have received all appropriations and approvals from the City Council and/or any other persons or authorities that are necessary for the City to convey the City Property and acquire the ACM Property.

d. There shall be no uncured breach by either Party of its representations, warranties, covenants, or obligations under this Agreement.

e. The City, as sponsor of DEN, shall have provided to ACM a copy of the required notice to the FAA of the City's intent to sell the City Property.

f. The City shall have executed, acknowledged, and delivered to the Title Company, for recordation at Closing prior to recordation of the City B&S Deed, a release of the Declaration of Covenants, Conditions and Restrictions for Airport Property in Adams County, recorded in Adams County under reception number 2025000001879, which release shall be in substantially the form attached hereto as **Exhibit G** and incorporated herein by reference.

g. The City shall have executed, acknowledged, and delivered to the Title Company, for recordation at Closing prior to recordation of the City B&S Deed, a Grant of Avigation Easement in substantially the form attached hereto as **Exhibit F** and incorporated herein by reference.

h. In accordance with Section 16.32 of the Adams County, Colorado Code, the City shall have completed, at the City's sole cost and expense, a short plat of the Vacant Land so the City Property has been legally subdivided and can be legally conveyed to ACM.

i. The City shall have executed, acknowledged, and delivered to the Title Company, for recordation at Closing after recordation of the City B&S Deed, the City Easement as contemplated in Section 7.c above; provided, however, that such delivery and recordation of the



City Easement shall not be required if the City has previously granted the City Easement in connection with the short plat referenced in Section 10.h above.

j. The farm lease which encumbers the City Property, a copy of which lease has been provided to ACM, shall either remain in effect and be assigned to ACM at Closing, or be terminated by the City in advance of Closing, as elected by ACM by written notice to the City no later than thirty (30) days prior to the Closing Date, provided that no notice shall be deemed ACM's election to keep the farm lease in effect and have it assigned to ACM at Closing. If ACM timely elects that the farm lease is to be terminated, any fees or costs required to be paid as a result of such termination shall be the sole obligation and expense of ACM.

k. Delivery of title shall be evidenced by the willingness of the Title Company to issue to each Party, at Closing, an ALTA form of extended coverage owner's policy of title insurance insuring marketable fee simple title to the applicable Party in the amount of coverage reasonably required by such Party, subject only to the permitted exceptions accepted by the applicable Party in accordance with this Agreement. The Parties acknowledge and agree that any easements encumbering the ACM Property and granted for the benefit of the City are intended to terminate and merge into the fee title to such Property acquired by the City at Closing, including without limitation (i) the Covenant and Sanitary Sewer Easement assigned to the City in accordance with the Assignment recorded on October 24, 2001 under Reception No. 2001180553; (ii) the Permanent Easement recorded on February 14, 2019 under Reception No. 2019017954; and (iii) the Conservation Easement recorded on July 12, 2019 under Reception No. 2019090259. Notwithstanding such merger and termination, the City may, at or after Closing, record releases or other documents to confirm or cause any or all the foregoing easements to be formally terminated of record.

If any of the foregoing conditions precedent to a Party's obligation to close are not satisfied by the Closing Date, then in addition to and without waiver of any other rights and remedies available to a Party under this Agreement, the Party for whose benefit the condition has not been satisfied shall have the right to (i) waive any unsatisfied conditions and close on the Closing Date (which may be extended as provided in this paragraph); (ii) extend the Closing Date for no more than thirty (30) days by written notice to the other Party during which time the Parties shall negotiate in good faith to cause the subject condition(s) precedent to be satisfied or waived; or (iii) terminate this Agreement by giving notice thereof to the other Party at least five (5) business days

prior to the original or extended Closing Date, in which event this Agreement shall terminate and neither Party shall have any further rights or obligations hereunder except those which survive termination as expressly provided in this Agreement.

11. Closing.

a. Closing and Possession. Subject to the satisfaction or waiver of the conditions to Closing contained above in this Agreement, and subject to any extension rights granted to a Party under this Agreement, the date ("**Closing Date**") for the exchange of the Properties contemplated by this Agreement ("**Closing**") shall occur no later than thirty (30) days after the expiration of the Due Diligence Period unless an earlier date is agreed to in writing signed by the Director and ACM. Closing shall take place at the offices of the Title Company on the Closing Date, and each Party may elect to close in Escrow without attending the Closing. Possession of each Property shall be delivered at Closing to the respective Party acquiring such Property.

b. Closing Costs. As provided above in this Agreement, the Party acquiring a Property shall pay the costs of the Title Policy issued or to be issued by the Title Company for such Property. In addition, the acquiring Party shall pay all documentary, transfer, real estate, and recording taxes and/or fees associated with the Property it is acquiring. The customary closing fee charged by the Title Company shall be split equally between the City and ACM. The Parties acknowledge that the City will be exempt from the payment of certain taxes and/or fees associated with the Property it is acquiring.

c. Prorations. General taxes and assessments for each Property for the year of Closing, and the most recent rents, water, sewer, utility and other customary charges for each Property, shall be paid in full at or prior to Closing by the Party that owns the Property prior to Closing, and such current taxes, assessments, and charges shall be prorated between the Parties as of the Closing Date; provided, however, the Parties acknowledge and agree the City is exempt from the payment of taxes and assessments, and as a result, the City shall not be liable or responsible for the proration or payment of the taxes or assessments associated with either Property, and the City shall not be responsible for the proration or payment of any other charges for either Property which the City is or will be exempt from paying prior to or after Closing. In accordance with the foregoing, the Parties acknowledge and agree that the City shall not be responsible for the payment of any taxes or assessments for either Property, and ACM shall only

be responsible for the taxes and assessments on the ACM Property up to and including the day of Closing, and ACM shall not become responsible for taxes and assessments on the City Property until the day of Closing.

d. Closing Documents. At or before Closing, each Party shall execute, have acknowledged (if applicable), and deliver into Escrow:

i. The respective Deed for the Property such Party is conveying so such Deed can be recorded by Escrow Agent in the real estate records of the county in which the applicable Property is located, and each such Property shall be conveyed to the acquiring Party free and clear of all liens and monetary encumbrances, except only such Off-Record Matters and matters shown by the Title Documents and/or Survey which such acquiring Party has accepted or is deemed to have accepted as provided above in this Agreement;

ii. Such instruments and documents as are required by this Agreement to be recorded at Closing, including without limitation the City Easement pursuant and subject to the provisions of Section 7.c and Section 10.i above, and such other documents as are required to satisfy the closing conditions in Section 10 above;

iii. Such other instruments and documents as are reasonably and customarily required by Escrow Agent or Title Company, including without limitation (A) an owners' affidavit and/or other agreement(s) by which the other Party shall be able to obtain an extended coverage Title Policy at or after Closing for the Property it is acquiring (provided that the City shall not be required to execute or deliver any affidavit or agreement which imposes indemnification, defense, hold harmless, and/or similar obligations on the City, and ACM shall not be required to provide a survey affidavit with respect to the ACM Property); and (B) a settlement statement reflecting the Closing costs and the other charges, if any, required to be paid by such Party under this Agreement (each, whether one or more, a "**Settlement Statement**"); and

iv. Funds for the Closing costs and other charges, if any, the applicable Party is required to pay as reflected on the Settlement Statement.

12. Time is of the Essence/Remedies. Time is of the essence in this Agreement. If any payment due in accordance with this Agreement is not timely paid, honored or tendered when due, or if any other obligation under this Agreement is not timely performed or waived as provided in this Agreement, then there shall be the following remedies, which shall be in addition to and without limitation of any other rights and remedies provided to a Party under this Agreement:

a. City Default. If the City is in default under this Agreement and such default has not been cured by the City within the timeframe provided elsewhere in this Agreement, or in the absence of any such timeframe, if the City's default is not cured within ten (10) business days after City's receipt of written notice thereof from ACM, then ACM may, as its sole and exclusive remedy, terminate this Agreement by written notice to the City, in which event this Agreement shall terminate and neither Party shall have any further rights or obligations hereunder except those which survive termination as expressly provided in this Agreement.

b. ACM Default. If ACM is in default under this Agreement and such default has not been cured by ACM within the timeframe provided elsewhere in this Agreement, or in the absence of any such timeframe, if ACM's default is not cured within ten (10) business days after ACM's receipt of written notice thereof from the City, then the City may elect to terminate this Agreement by written notice to ACM, in which event this Agreement shall terminate and neither Party shall have any further rights or obligations hereunder except those which survive termination as expressly provided in this Agreement. Nothing herein waives, impairs, limits or modifies the City's power and authority of condemnation.

13. Return of Documents. If this Agreement is terminated, then all documents and things of value received by a Party under this Agreement from the other Party shall be returned to the providing Party, and this Agreement shall terminate and be of no further force or effect and neither Party shall have any further rights or obligations hereunder except those which survive termination as expressly provided in this Agreement.

14. Third Party Challenge to Validity of Agreement. In the event that any third party brings an action against the City or ACM regarding the validity or operation of this Agreement, both Parties will reasonably cooperate, at no additional cost to the other Party, in any such litigation. If the other Party is named as a party in such action by such third party, it shall bear its own legal costs.

15. No Brokers. The City and ACM represent to each other that they have had no negotiations through or brokerage services performed by any broker or intermediary that would require the City to pay any commission or fees.

16. Severability. In the event any provision of this Agreement is or would be held to be invalid, prohibited, or unenforceable in any applicable jurisdiction for any reason unless narrowed by construction, this Agreement shall, as to such jurisdiction, be construed as if such invalid,



prohibited, or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited, or unenforceable in any jurisdiction for any reason. Such provision, as to such jurisdiction, shall be ineffective to the extent of such invalidity, prohibition, or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

17. No Discrimination in Employment. In connection with the performance of duties under this Agreement, ACM agrees not to refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. During the term of this Agreement, ACM shall insert the foregoing provision in all subcontracts relating to this Agreement.

18. When Rights and Remedies Not Waived. In no event shall any performance under this Agreement constitute or be construed to be a waiver by either Party of any breach of covenant or condition or of any default that may then exist. The rendering of any such performance when any breach or default exists in no way impairs or prejudices any right or remedy available with respect to the breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of this Agreement may be deemed or taken to be a waiver of any other default or breach. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION OR ELSEWHERE IN THIS AGREEMENT, ACM ACKNOWLEDGES AND AGREES THAT THE CITY IS RELYING UPON AND DOES NOT WAIVE THE MONETARY LIMITATIONS OR ANY OTHER RIGHTS, IMMUNITIES OR PROTECTIONS PROVIDED BY THE COLORADO GOVERNMENTAL IMMUNITY ACT, C.R.S. § 24-10-101, *ET SEQ.*, AS AMENDED.

19. Subject to Local Laws; Venue. This Agreement is subject to and is to be construed in accordance with the laws of the City and County of Denver and the State of Colorado, without regard to the principles of conflicts of law, including without limitation all matters of formation, interpretation, construction, validity, performance, and enforcement. Venue for any action arising out of this Agreement shall be exclusively in the District Court of the City and County of Denver, Colorado.

20. Notices. All notices provided for in this Agreement must be in writing and be personally delivered, sent via electronic mail, or mailed by registered or certified United States mail, postage prepaid, return-receipt requested, if to ACM at the addresses listed below and if to the City at the addresses given below. Notices delivered personally or sent electronically or by email are effective when sent. Notices sent by certified or registered mail are effective upon receipt. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification:

If to the City:

Lisa Lumley  
Division of Real Estate  
Department of Finance  
201 West Colfax Avenue, Department 1010  
Denver, Colorado 80202  
Email: lisa.lumley@denvergov.org

and

Luke McKay  
Division of Real Estate  
Department of Finance  
201 West Colfax Avenue, Department 1010  
Denver, Colorado 80202  
Email: luke.mckary@denvergov.org

With copies of termination and similar notices to:

Mayor  
City and County of Denver  
1437 Bannock Street, Room 350  
Denver, Colorado 80202

and

Denver City Attorney's Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

If to ACM:

Andrew R. Klein and Mark Witkiewicz  
ACM Park Hill JV VII LLC  
4100 East Mississippi Avenue, Suite 500  
Glendale, Colorado 80246  
Email: aklein@westsideinv.com; markw@westsideinv.com

21. Agreement as Complete Integration; Amendments. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment to this Agreement will have any force or effect whatsoever, unless embodied in writing in this Agreement. Except as expressly provided for in this Agreement, no subsequent novation, modification, renewal, addition, deletion, or other amendment to this Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by both Parties.

22. Third-Party Beneficiary. It is the intent of the Parties that no third-party beneficiary interest is created in or by this Agreement. The Parties are not presently aware of any actions by them or any of their authorized representatives that would form the basis for interpretation construing a different intent, and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

23. Subject To Council Approval. As provided above in this Agreement, this Agreement is subject to the approval of the City Council in accordance with the provisions of the City Charter, and this Agreement shall not take effect until its final approval by City Council and until signed by all appropriate City officials, including without limitation the Mayor, the Clerk and Recorder, the Manager of Finance and the Auditor.

24. Appropriation by City Council. As provided above in this Agreement, all obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

25. Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the 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.

26. No Personal Liability. No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of ACM, shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

27. Conflict of Interest by City Officer. ACM represents that, to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

28. Right to Alter Time for Performance and Make Non-Substantive Changes. The Parties may alter any time for performance set forth in this Agreement, or make technical, minor, or non-substantive changes to this Agreement, by a letter, amendment, or other writing signed by the Director, or her designee, and an authorized representative of ACM. All other amendments to this Agreement must be fully executed by the City and ACM.

29. Merger. Any obligations under this Agreement which are expressly stated to survive Closing or which by their terms cannot or may not be performed until after Closing shall survive Closing and shall not be merged into the Deeds conveying the Properties.

30. Construction. This Agreement may not be interpreted in favor of or against either Party merely because of their respective efforts in preparing it. The rule of strict construction against the drafter does not apply to this Agreement. In addition, this Agreement is subject to the following rules of construction:

a. Specific gender references are to be read as the applicable masculine, feminine, or gender-neutral pronoun.

b. The words "include," "includes," and "including" are to be read as if they were followed by the phrase "without limitation."

c. The words "Party" and "Parties" refer only to a named party to this Agreement.

d. Unless otherwise specified, any reference to a law, statute, regulation, charter or code provision, or ordinance, means that statute, regulation, charter or code provision, or ordinance, as amended or supplemented from time to time and any corresponding provisions of successor statutes, regulations, charter or code provisions, or ordinances.



e. Headings and captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

31. Assignment. The City is not obligated or liable under this Agreement to any party other than the other Party named in this Agreement. ACM understands and agrees that it may not assign any of its rights, benefits, obligations, or duties under this Agreement without the City's prior written approval, which approval may be granted or withheld in the City's sole and absolute discretion.

32. Counterparts. This Agreement may be executed in counterparts, each of which is an original and together constitute the same document. This Agreement may be executed by electronically scanned signatures which shall be deemed an original.

33. Electronic Signatures and Electronic Records. Each Party consents to the use of electronic signatures by the other Party. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties 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.

34. No Reliance. Except for the respective representations, warranties, covenants and obligations of the Parties in this Agreement, the Parties (a) expressly assume any and all risks that the facts and law may be or become different from the facts and law as known, or believed to be true, by the Parties as of the date of this Agreement; and (b) agree that in executing this Agreement, no Party has relied upon any information supplied by the other or by their attorneys, or upon any obligation or alleged obligation of the other Party to disclose information relevant to this Agreement.

[Remainder of page intentionally blank; signature pages follow]

**Contract Control Number:**

FINAN-202578106-00

**Contractor Name:**

ACM Park Hill JV VII LLC

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

---

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**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

---

---

By:

---

**Contract Control Number:**  
**Contractor Name:**

FINAN-202578106-00  
ACM Park Hill JV VII LLC

By: SEE VENDOR SIGNATURE PAGE ATTACHED

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ACM:**

**ACM PARK HILL JV VII LLC,**  
a Delaware limited liability company

By: 

\_\_\_\_\_  
Andrew R. Klein, Authorized Signatory



## **EXHIBIT A**

### **(LEGAL DESCRIPTION AND DEPICTION OF THE ACM PROPERTY)**

#### **PARCEL 1:**

A PARCEL OF LAND IN THE SOUTHWEST ONE-QUARTER OF SECTION 19 AND THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30, ALL IN TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 67 WEST; THENCE NORTH 89°40'10" EAST ALONG THE SOUTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°04'08" WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 909.31 FEET; THENCE NORTH 03°44'42" EAST A DISTANCE OF 150.33 FEET; THENCE NORTH 00°04'08" WEST ALONG A LINE 60.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 175.00 FEET; THENCE THE FOLLOWING (5) COURSES:

- 1) NORTH 44°57'00" EAST A DISTANCE OF 91.95 FEET;
- 2) NORTH 89°56'36" EAST A DISTANCE OF 290.00 FEET;
- 3) NORTH 00°04'44" WEST A DISTANCE OF 115.00 FEET;
- 4) NORTH 89°55'48" EAST A DISTANCE OF 1025.05 FEET;
- 5) NORTH 00°04'45" WEST A DISTANCE OF 1114.17 FEET TO ITS INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD AND A POINT OF NON-TANGENT CURVATURE; THENCE THE FOLLOWING (3) COURSES ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SMITH ROAD:

- 1) ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5607.93 FEET, A CENTRAL ANGLE OF 09°02'08" AND AN ARC LENGTH OF 884.37 FEET (THE CHORD OF WHICH BEARS SOUTH 84°28'25" EAST A DISTANCE OF 883.46 FEET) TO A POINT OF NON-TANGENCY;
- 2) SOUTH 80°43'42" EAST A DISTANCE OF 89.72 FEET;
- 3) SOUTH 79°58'45" EAST A DISTANCE OF 28.82 FEET;

THENCE SOUTH 00°09'32" EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 19 A DISTANCE OF 1086.52 FEET; THENCE SOUTH 00°09'08" EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE SOUTH ONE-HALF OF THE SOUTHWEST ONE-QUARTER OF SECTION 19 A DISTANCE OF 1324.84 FEET; THENCE, SOUTH 00°08'13" EAST ALONG A LINE 50.00 FEET WESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SECTION 30 A DISTANCE OF 2.96 FEET; THENCE THE FOLLOWING (3) COURSES:

- 1) NORTH 82°31'11" WEST A DISTANCE OF 28.58 FEET;
- 2) SOUTH 89°39'27" WEST A DISTANCE OF 483.58 FEET;
- 3) SOUTH 00°37'56" EAST A DISTANCE OF 1264.16 FEET;

THENCE SOUTH 89°38'54" WEST ALONG A LINE 59.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTHERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1891.72 FEET; THENCE NORTH 00° 00'00" WEST ALONG A LINE 50.00 FEET EASTERLY OF AND PARALLEL WITH THE WESTERLY LINE OF THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 30 A DISTANCE OF 1263.62 FEET TO THE POINT OF BEGINNING,

LESS AND EXCEPT THOSE PORTIONS CONVEYED TO THE REGIONAL TRANSPORTATION DISTRICT BY QUITCLAIM DEED RECORDED MARCH 4, 2013 UNDER RECEPTION NO. 2013029217.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT OVER AND ACROSS THE OVERLOOK AT PARK HILL FILING NO. 1 RECORDED MAY 2, 2001 UNDER RECEPTION NO. 2001067475 NECESSARY AND INCIDENT TO USE, OPERATION AND MAINTENANCE OF THE ADJOINING GOLF COURSE PROPERTY AS MORE FULLY DEFINED AND DESCRIBED IN GOLF COURSE COVENANTS AND WAIVER AND DISCLAIMER (PARK HILL GOLF COURSE) RECORDED MAY 15, 2001 UNDER RECEPTION NO. 2001076257, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

City & County of Denver - Property Record Search


0119300032000  
4141 E 35TH AVE

ACM PARK HILL JV VII LLC  
4100 E MISSISSIPPI AVE GLENDALE CO



## EXHIBIT B

### (DEPICTION OF THE VACANT LAND)

 **ADAMS COUNTY**  
COLORADO

Parcel #: 0181900000181

Search...

I want to...

**Description**

[Property Report](#) -  
CITY AND COUNTY OF DENVER ATTN REAL ESTATE  
DEPT

**Hyperlinks**

[Link to Property Report](#)

**Details**

Parcel Number  
0181900000181


Subdivision  
N/A


Parcel Address 1:  
N/A

Parcel Address 2:  
N/A

Owner  
CITY AND COUNTY OF DENVER ATTN REAL  
ESTATE DEPT

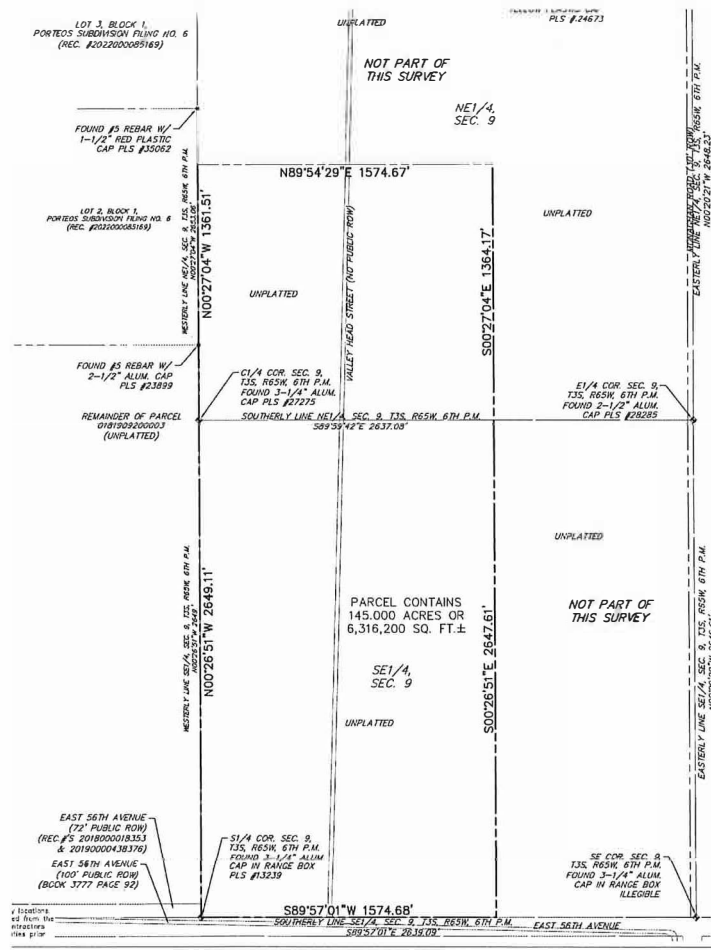
Owner Address:  
8500 PENA BLVD

  
The map shows a large rectangular parcel of land. To the west of the parcel is a vertical line labeled 'Valley View St'. To the south of the parcel is a horizontal line labeled 'Pena Blvd'. A location pin is placed in the center of the parcel. The map includes a scale bar at the bottom indicating 0, 500, and 1000 feet. A 'Hillshade...' button is visible at the bottom left of the map area.

Layers  Parcel #: 0181900000181

**(LEGAL DESCRIPTION AND DEPICTION OF THE CITY PROPERTY)**

ALL LINEAL DIMENSIONS ARE IN U.S. SURVEY FEET.







**EXHIBIT A TO CITY B&S DEED**



**EXHBIT A TO ACM B&S DEED**

## **EXHIBIT F**

### **(FORM OF AVIGATION EASEMENT)**

#### **GRANT OF AVIGATION EASEMENT**

THIS GRANT OF AVIGATION EASEMENT ("**Avigation Easement**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "**Effective Date**") by ACM PARK HILL JV VII LLC, a Delaware limited liability company ("**Grantor**"), and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("**Grantee**").

#### **RECITALS**

- A. Grantee is the owner and operator of the Denver International Airport being situated in the County of Adams and City and County of Denver, State of Colorado (the "**Airport**").
- B. As of the Effective Date, Grantor is the owner in fee simple of that certain real property located in the County of Adams, State of Colorado, legally described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**").
- C. The Property has been conveyed by Grantee to Grantor on even date herewith.
- D. Grantor and Grantee wish to execute and record this Avigation Easement with respect to the Property for the benefit of Grantee and the protection of Airport operations.

#### **AGREEMENT**

NOW, THEREOFRE, FOR VALUABLE CONSIDERATION, in consideration of good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

- 1. **RESIDENTIAL USE PROHIBITED.** No residential or hotel use shall be constructed or allowed to exist on any portion of the Property.
- 2. **GRANT OF AVIGATION EASEMENT.**
  - a. Grantor, for itself and its successors and assigns, does hereby grant to Grantee its successors and assigns, for the use and benefit of Grantee, and all users of the Airport, the following easements, rights and servitudes, which shall be appurtenant to the Airport, as to Grantee, and in gross, as to the tenants and licensees of Grantee and as to all users of the Airport (collectively the "Avigation Easement").
    - i. Passage of Aircraft. A perpetual nonexclusive easement and right of way for the "Passage of Aircraft" (as hereinafter defined) by whomsoever owned and operated in, to, over and through all air space of the Property located

above the height of the lowest of the "imaginary surfaces" established in relation to the Airport and to each runway at the Airport, based on full airport buildout of twelve runways, in accordance with the applicable provisions of Federal Aviation Administration regulations set forth in 14 C.F.R. §§77.19-77.29 (as the same may be amended from time to time), to an indefinite height above said imaginary surfaces. As used herein, the term "**Passage of Aircraft**" shall include, but not be limited to, aircraft operation, navigation and flight; however, except to the extent constituting "**Incidental Effects**" as provided in **Section 3.a.ii** below, the term "**Passage of Aircraft**" shall not include aircraft landing, explosion, crash, falling objects, dumping or spillage of liquid fuel or other occurrence causing direct physical injury to persons or direct physical damage to property.

- ii. Incidental Effects. A perpetual nonexclusive easement and right to cause within, and to enter or penetrate into or transmit through, any improved or unimproved portion of the Property, or any air space above the ground surface of the Property, such noise, sounds, vibrations, electronic interference, fumes, dust, fuel vapor particles, interference with sleep and communication and all other similar effects that may result from or be related to the ownership, operation or maintenance of the Airport, the use of the airport for the flight of aircraft over the Property (at heights above the "imaginary surfaces" described in **Section 3.a.i**), or the taking-off or landing of aircraft from or at the Airport (collectively, "**Incidental Effects**"), including, without limitation, any Incidental Effects that may be objectionable or would otherwise constitute a trespass, a permanent or continuing nuisance, personal injury or taking or damage to the Property due to invasiveness, intermittence, frequency, loudness, intensity, toxicity of aircraft emissions or fuel, interference, emission, odor, or annoyance.

### 3. COVENANTS.

- a. Interference With Air Navigation. In furtherance of the easements and rights herein granted, Grantor hereby covenants, for itself and its successors and assigns, at all times hereafter, that it will not take any action, cause or allow any electronic, electromagnetic or light emissions, allow any obstruction to exist that would penetrate the "imaginary surfaces" described in Section 1.1 above for the Airport's full twelve runway buildout, or construct any structure on the Property which would conflict or interfere with or infringe Grantee's rights hereunder, including the full use and enjoyment of the Avigation Easement, and further, Grantor for itself, and its successors and assigns, does fully waive, remise and release any right or cause of action which it may now have or which it may accrue in the future against Grantee due to loss or damage arising from any activity, action or event for which the Avigation Easement is granted hereunder.
- b. Changes. The rights, easements, benefits, waivers, covenants and Agreements granted hereunder, including the Avigation Easement, shall continue notwithstanding any increase or other change in the boundaries, volume of



operations, noise, development of new runways or pattern of air traffic at the Airport. The Avigation Easement and this Avigation Easement may not be modified, amended, terminated or abandoned except by execution and delivery of an instrument executed and acknowledged by Grantee, and Grantor agrees that, in the absence of such an instrument, no conduct by Grantee or increase, diminution or change in use of the Avigation Easement shall constitute either an overburdening of the Avigation Easement or a termination or abandonment of the Avigation Easement.

4. **NOTICE OF AIRPORT.** Grantor and all subsequent owners of all or any portion of the Property shall provide the following notice to all prospective purchasers and tenants of the Property. The notice shall be in 14-point bold type on a single sheet of paper which shall be signed by the prospective purchaser(s) or tenant(s) prior to entering into a contract for purchase or lease of any portion of the Property:

#### **NOTICE OF AIRPORT IN VICINITY**

**This property is located in the vicinity of an airport. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase or lease and determine whether they are acceptable to you.**

#### **5. GENERAL PROVISIONS.**

- a. Severability. In the event that any one or more covenant, condition, right or other provision contained in this Avigation Easement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Avigation Easement and shall in no way affect, impair or invalidate any other covenant, condition, right or other provision contained in this Avigation Easement.
- b. Recordation. This Avigation Easement shall be recorded in the records of the Clerk and Recorder of the County of Adams, State of Colorado.
- c. Interpretation. No provision of this Avigation Easement is to be interpreted for or against any party because that party or that party's legal representative drafted such provision
- d. Waiver. No violation or breach of any provision of this Avigation Easement may be waived unless in writing. Waiver of any one breach of any provision of this Avigation Easement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Avigation Easement.
- e. Covenants Running With the Land. All covenants, easements, and other provisions of this Avigation Easement are covenants running with the land, or equitable servitudes, as the case may be. The obligations and burdens created by this

Avigation Easement shall bind the Property and the Grantor and all successor owners, other parties having any right, title, or interest in the Property or any portion thereof, and any of their respective successors, assigns, heirs, devisees, executors, administrators, and personal representatives.

- f. Additional Documents. In addition to the documents and instruments to be delivered as provided in this Avigation Easement, Grantor or its successors and assigns, as the case may be, shall, from time to time at the request of Grantee, execute and deliver to Grantee such other documents and shall take such other action as may be reasonably required to carry out more effectively the terms of this Avigation Easement.
- g. Governing Law. This Avigation Easement Agreement has been negotiated and entered into in the State of Colorado, and shall be governed by, construed and enforced in accordance with the statutory, administrative and judicial laws of the State of Colorado.
- h. Integration. This Avigation Easement, including the exhibits, constitutes the final, complete and exclusive statement of the parties relative to the subject matter hereof and there are no oral or parol agreements existing between Grantor and Grantee relative to the subject matter hereof which are not expressly set forth herein and covered hereby. This is an integrated agreement.

*[Signature page follows]*



**EXHIBIT A**

Property Description

[to be inserted]

**EXHIBIT G**

**(FORM OF RELEASE OF DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR AIRPORT PROPERTY IN ADAMS COUNTY)**

**RELEASE OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
AIRPORT PROPERTY IN ADAMS COUNTY**

THIS RELEASE OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AIRPORT PROPERTY IN ADAMS COUNTY ("**Release**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "**Effective Date**") by the CITY AND COUNTY OF DENVER, by and through its Department of Aviation, a municipal corporation of the State of Colorado ("**Declarant**").

**RECITALS**

- E. Declarant is the owner and operator of the Denver International Airport being situated in the County of Adams and City and County of Denver, State of Colorado.
- F. Declarant executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Airport Property in Adams County, dated January 9, 2025, and recorded in the real property records for Adams County, Colorado on January 13, 2025, under Reception Number 2025000001879 (the "**Declaration**").
- G. Declarant now wishes to terminate and release, in its entirety, the Declaration.

**TERMINATION AND RELEASE**

Declarant hereby terminates, rescinds, releases, and revokes, in its entirety and for all purposes, the Declaration as of the Effective Date.

THIS RELEASE is hereby executed as of the Effective Date.

**THE CITY AND COUNTY OF DENVER,**  
by and through its Department of Aviation,  
a municipal corporation of the State of Colorado

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

Phillip A. Washington, Chief Executive Officer  
Department of Aviation



STATE OF COLORADO

)

) ss.

City and County of Denver

)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2025 by Phillip A. Washington.

WITNESS my hand and official seal.

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

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