

LAND AND EASEMENT CONVEYANCE AND DRAINAGE AGREEMENT

THIS LAND AND EASEMENT CONVEYANCE AND DRAINAGE AGREEMENT (this "**Agreement**") is made and entered into the date on the City's signature page (the "**Effective Date**"), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city (the "**City**"), **BROADWAY STATION PARTNERS LLC**, a Delaware limited liability company ("**BSP**"); **BSP EAST, LLC**, a Delaware limited liability company ("**BSP East**") and **BROADWAY STATION METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado operating within the City (the "**District**"). City, BSP, BSP East and the District are referred to collectively herein as the "**Parties**" or singularly, as a "**Party**."

Recitals

This Agreement is made with respect to the following facts:

A. BSP East is the owner of certain real property located approximately three miles south of downtown Denver and immediately adjacent to the I-25 & Broadway light rail station (the "**Site**"). The Site is bounded by Interstate 25 on the north, West Mississippi Avenue on the south, South Broadway on the east, and Vanderbilt Park on the west. The northern end of the Site contains a parcel commonly referred to as the "**Swis Tire Parcel**."

B. As master developer, BSP seeks to develop the Site as a high quality, mixed- use transit-oriented development that will be strategically located and planned as a vibrant hub of Denver's city life (the "**Development**").

C. The City's Development Review Committee ("**DRC**") has approved an Infrastructure Master Plan ("**IMP**") for the Site, which IMP is on file with the City Clerk at City Clerk File No. 2016-0236. The IMP is the guiding document of needed infrastructure to serve development on the Site.

D. The City and BSP have entered into an Agreement Concerning Environmental Standards, Open Space, Vested Rights, and Horizontal Infrastructure Design and Construction (the "**Development Agreement**"), which Development Agreement was approved by the Denver City Council on June 20, 2016 and is recorded in the real property records of the City and County of Denver at Reception No. 2016086857.

E. The IMP contemplates that the portion of West Kentucky Avenue that is located within the Swis Tire Parcel as shown on the IMP will be realigned ("**Realigned Kentucky Avenue**") in conjunction with the City's proposed future improvements to South Broadway known as the "**Gap Project**." The City desires an easement for the area of the Realigned Kentucky Avenue.

F. The City owns and has designated as a park, an area known as Vanderbilt Park East (“**VP East**”). The City also owns a parcel of land which is not a designated park adjacent to the Site referred to herein as the “**Hockey Stick Parcel**”, which Hockey Stick Parcel is approximately 0.5 acres and is depicted and legally described on **Exhibit A**.

G. Sections 4(A)(i) and 6(B)(ii)(a)(4) of the Development Agreement refer to the IMP drainage concept that includes VP East and the Hockey Stick Parcel and contemplate the location of a regional detention and water quality pond and associated storm drainage facilities in VP East subject to a subsequent written agreement between BSP and the City, and approval by City Council.

H. The Parties desire to enter into this Agreement to provide for (1) conveyance by BSP East to the District of the property that will contain Realigned Kentucky Avenue; (2) conveyance by the District to the City of an easement for the area that will contain Realigned Kentucky Avenue; and (3) conveyance from the City to BSP or its designated assignee of the Hockey Stick Parcel, all in accordance with the provisions of this Agreement.

I. The Parties further acknowledge that BSP, the City and the District currently are working with the Denver Urban Renewal Authority (“**DURA**”) to finalize a tax increment financing package (the “**TIF Package**”) related to the Development and that certain components of the TIF Package need to be approved by the Denver City Council. The Parties contemplate that the value to the City of this transaction will be treated as a developer advance to be reimbursable to District as part of the TIF Package.

J. With regard to the regional detention and water quality pond and associated storm drainage facilities within VP East, this Agreement also is intended to serve as the written agreement contemplated by Sections 4(A)(i) and 6(B)(ii)(a)(4) of the Development Agreement.

Agreement

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

1. Conveyance of Land Underlying Easement Area

A. BSP East agrees to convey to the District that portion of the Swis Tire Parcel required by the City for Realigned Kentucky Avenue as legally described on **Exhibit B** attached hereto and made a part hereof (the “**Easement Land**”). The consideration for the conveyance is set forth in Section 6.

B. BSP East shall convey the Easement Land within ninety (90) days after the City Council’s final approval of the TIF Package (the “**Easement Land Conveyance Date**”).

C. Within thirty (30) days after the City Council’s final approval of the TIF Package, BSP East will provide the District and the City concurrently all of the environmental

reports in its possession regarding the Easement Land. In addition, upon request from the District, BSP East will provide access to the Easement Land so that the District may conduct Phase I and Phase II environmental site assessments to evaluate the environmental condition of the Easement Land. The District will provide to the City copies of any data and/or reports related to the environmental condition of the Easement Land within fifteen (15) days of receipt.

D. In addition to the environmental review described above, the District shall have the right to inspect the physical condition of the Easement Land at the District's sole expense.

E. Within thirty (30) days after the City Council's final approval of the TIF Package, BSP East shall deliver to the District and the City concurrently true copies of all lease(s) and survey(s) in BSP's possession pertaining to the Easement Land. In addition, BSP shall disclose to the District all easements, liens or other title matters not shown by the public records of which BSP East have actual knowledge. The District shall have the right to inspect the Easement Land to determine if any third party has any right in the Easement Land not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

F. Within thirty (30) days after the City's approval of the TIF Package, BSP East shall provide the District and the City with title commitments for the Easement Land and copies of exception documents shown thereon.

G. The District acknowledges that Hazardous Materials exist within and underlying the Easement Land as of the Easement Land Conveyance Date ("**Existing Contamination**") and agrees to continue the semi-annual monitoring and operation of the Environmental Systems on and after the Easement Land Conveyance Date to the extent required under the Voluntary Cleanup Plan related to the Easement Land listed in **Exhibit D**, which incorporate that certain Materials Management Plan dated October 5, 2015 ("**MMP**"), ("**VCUP**") until a no further action determination ("**NAD**") is issued by Colorado Department of Public Health and Environment ("**CDPHE**"). The VCUP related to the Easement Land shall not be amended without approval from CDPHE and shall require no less stringent cleanup of the property within and underlying the Easement Land than is required under the current VCUP for the Easement Land.

H. The District shall provide a copy of any request for amendment or modification to the VCUP to BSP, BSP East and the City Manager of Environmental Health at or prior to the time of submittal to CDPHE. If the VCUP is not completed and a NAD is not received, the District shall be responsible for remediation of the property underlying the Easement Land to standards required under the current VCUP. The District's obligations under this section are subject to adequate funding and appropriation.

I. BY PROCEEDING TO AND CLOSING THE CONTEMPLATED TRANSACTION, THE DISTRICT EXPRESSLY AGREES THAT IT IS PURCHASING THE EASEMENT LAND IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS, AND THAT THE DISTRICT MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE EASEMENT LAND WHATSOEVER, AND THE DISTRICT FURTHER AGREES THAT

NEITHER BSP NOT BSP EAST SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE EASEMENT LAND AND SHALL NOT BE BOUND IN ANY MANNER BY GUARANTEES, PROMISES, PROJECTIONS, OPERATING STATEMENTS, SET-UPS, OR OTHER INFORMATION PERTAINING TO THE EASEMENT LAND, MADE, FURNISHED, OR CLAIMED TO HAVE BEEN MADE OR FURNISHED, BY BSP, BSP EAST OR ANY OTHER PERSON OR ENTITY, INCLUDING ANY EMPLOYEE, AGENT, AFFILIATE, ATTORNEY, OR ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT BSP OR BSP EAST, WHETHER VERBALLY OR IN WRITING. THE DISTRICT SHALL BE RESPONSIBLE FOR INVESTIGATING, AT ITS OPTION, THE EASEMENT LAND, AS PROVIDED FOR UNDER THE TERMS OF THIS AGREEMENT, AND SHALL NOT RELY ON ANY REPRESENTATION, WARRANTY, AND STATEMENT OR DUE DILIGENCE DOCUMENT PROVIDED BY BSP OR BSP EAST.

J. The District, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the Benefitted Parties (defined below) as defined below, from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys' fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages (defined below) and Environmental Matters (defined below), whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from, out of or as a result of the environmental conditions or the presence of any Hazardous Materials (defined below) at, on, in, under, upon, about, beneath or emanating from the Easement Area.

1. "Benefitted Party" and collectively, the "**Benefitted Parties**" shall mean BSP, BSP East, Broadway Mississippi Development, LLC, Santa Fe Real Estate Holdings LLC, The Gates Corporation, Air Distribution Technologies, Inc. (formerly known as Tomkins Corporation), The Blackstone Group, L.P., Canadian Pension Plan Investment Board, Onex Corporation, and the current and former officers, trustees, directors, shareholders, employees, advisors, managers, members and affiliates of any of them, and their respective successors and assigns.

2. "**Damages**" shall mean and include the following: (a) losses, costs, expenses, damages or liabilities resulting from any personal injury claims relating to any Environmental Matter; and/or (b) direct and proximate losses, liabilities, costs, expenses and claims, arising from requirements or obligations under Environmental Laws, including without limitation; (i) the cost of remediation of an environmental condition, including reasonable engineering, consultant, expert, and legal costs; (ii) costs associated with any order or request from a governmental agency relating to the environmental condition of the Easement Land, including reasonable engineering, consultant, expert, and legal costs; (iii) costs incurred in defending any third party action for reimbursement or contribution relating to the environmental condition of the Easement Land, including reasonable engineering, consultant, expert, legal and court costs; and (iv) any other costs

incurred as a result of an order issued or requirement imposed by a governmental agency or officer relating to an Environmental Matter.

3. “**Environmental Laws**” shall mean and include without limitation (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (42 U.S.C. § 6901 et seq.), (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (42 U.S.C. § 9601 et seq.), (iii) the Clean Water Act, as now or hereafter amended (33 U.S.C. § 1251 et seq.), (iv) the Toxic Substances Control Act of 1976, as now or hereafter amended (15 U.S.C. § 2601 et seq.), (v) the Clean Air Act, as now or hereafter amended (42 U.S.C. § 7401 et seq.), (vi) the Safe Drinking Water Act, (42 U.S.C. § 300f et seq.), (vii) the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S. § 1802 et seq.), (viii) all regulations promulgated under any of the foregoing, (ix) any local or state law, statute, regulation or ordinance analogous to any of the foregoing, including but not limited to Colorado Revised Statutes, Title 25, Articles 15 and 18, as now or hereafter amended, and (x) any other federal, state, or local law (including any common law), statute, regulation, or ordinance regulating, prohibiting, or otherwise restricting the pollution, protection of the environment or the use, storage, discharge or disposal of Hazardous Materials.

4. “**Environmental Matters**” shall mean and include any condition, claim, cost, order, demand, requirement or liability either (i) related to the Easement Land and regulated or arising under any Environmental Law, or (ii) caused by or relating to any Hazardous Materials or environmental contamination at, on, in, under, upon, about, beneath or emanating from Property, including without limitation underground storage tanks.

5. “**Hazardous Materials**” shall mean and include any toxic or hazardous wastes, substance, product matter, material, waste, solid, liquid, gas, or pollutant, the generation, storage, disposal, handling, recycling, release, treatment, discharge, or emission of which is regulated, prohibited, or limited under any Environmental Law, and shall also include, without limitation: (i) gasoline, diesel, diesel fuel, fuel oil, motor oil, waste oil, and any other petroleum products or hydrocarbons including any additives or other by-products associated therewith, (ii) asbestos and asbestos-containing materials in any form, and (iii) lead-based paint, radon or polychlorinated biphenyls.

K. The Easement Land shall be conveyed subject to the existing lease between BSP East and Nebraskaland Tire, Inc. (the “**Lease**”). BSP East shall have the right to continue operating and receiving the revenues from the Lease until the District notifies BSP East that it has received the Conveyance Notice under the Easement. At such time, BSP East shall terminate the Lease and shall vacate and cause the tenant under the Lease to vacate the Easement Land and the building on the Easement Land. Should there be any delay in the tenant vacating the Easement Land or the building on the Easement Land, the Easement Land Conveyance Date shall be extended for the number of days of such vacation delay. BSP East shall use diligent

efforts in seeking to cause the tenant to vacate the Easement Land, including pursuing eviction proceedings, if necessary.

2. Easement for Realigned Kentucky Avenue

A. The District agrees to convey to the City a permanent easement (the “**Easement**”) for Realigned Kentucky Avenue across that portion of the Swis Tire Parcel required by the City for Realigned Kentucky Avenue as legally described on **Exhibit B** attached hereto and made a part hereof (the “**Easement Area**”). The Easement will be in the form attached as **Exhibit C** hereto and made a part hereof. The consideration for the conveyance is set forth in Section 4. In addition, at any time after the District conveys the Easement, BSP East shall, within thirty (30) days after request from the City Department of Public Works, grant to the City, at no cost to the City, a temporary construction easement (“TCE”) for construction staging and other purposes along the southern and western edges of the Easement Area. The TCE shall be no greater than ten (10) feet wide, and legal descriptions of the TCE will be defined at a later date. The TCE shall have a duration of one year.

B. The District will convey the Easement within one hundred and eighty (180) days after the City provides written notice to the District and BSP (the “**Conveyance Notice**”) that it desires to acquire the Easement (the “**Easement Conveyance Date**”). The Conveyance Notice, to be valid, must be accompanied by a certificate of non historic status issued by the Denver Landmark Preservation Commission for the building located within the Easement Area (the “**Certificate**”). As a condition precedent to the District’s obligation to convey the Easement, BSP shall have conveyed the Easement Land to the District. In addition, if the City Council has not approved the TIF Package by December 31, 2017, the District shall have no further obligation to convey the Easement. In such event, the District shall, on or before January 31, 2018, reconvey the Easement Land to BSP, this Agreement shall terminate, and the Parties shall have no further obligation hereunder.

C. The purpose of the Easement will be as set forth in the form of Easement attached as **Exhibit C** (the “**Project**”).

D. Upon receipt of the Conveyance Notice, BSP East shall provide notice to the tenant under the Lease terminating the Lease, if such Lease has not been previously terminated.

E. Within thirty (30) days after the Conveyance Notice, BSP East and/or the District will provide the City with all of the environmental reports in their possession regarding the Easement Area. In addition, upon request from the City, the District will provide access to the Easement Area so that the City may conduct Phase I and Phase II environmental site assessments to evaluate the environmental condition of the Easement Area.

F. In addition to the environmental review described above, the City or its designee shall have the right to inspect the physical condition of the Easement Area at the City's sole expense.

G. Within thirty (30) days after the Conveyance Notice, BSP East and/or the District shall deliver to the City true copies of all lease(s) and survey(s) in BSP East’s or the

District's possession pertaining to the Easement Area. In addition, BSP and/or the District shall disclose to the City all easements, liens or other title matters not shown by the public records of which BSP East or the District have actual knowledge. The City shall have the right to inspect the Easement Area to determine if any third party has any right in the Easement Area not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

H. Within thirty (30) days after the Conveyance Notice, the District shall provide the City with a title commitment for the Easement Area and copies of exception documents shown thereon.

I. At least thirty (30) days prior to the Easement Conveyance Date (the "**City Objection Date**"), the City's Executive Director of Public Works shall provide written notice of unmerchantability of title, any matter disclosed by the survey or title commitment for the Easement Area that is not acceptable to the City, or any environmental condition or any other matter disclosed by the inspection under Section 2 (F) through (G) above that is not acceptable to the City in its reasonable discretion. If the District does not receive the City's notice by the City Objection Date, the City shall be deemed to have accepted the condition of the Easement Area. If the District receives notice of any unsatisfactory condition(s) by the City Objection Date, the District shall may, but shall not be obligated to, correct said unsatisfactory condition(s) within the period ending fifteen (15) days prior to the Easement Conveyance Date (the "**Easement Cure Period**"). The District may extend the Easement Cure Period and the Easement Conveyance Date for up to thirty (30) days in order to correct any such conditions. The District shall be obligated to remove any monetary liens encumbering the property. If the District does not correct said unsatisfactory condition(s) by the end of the Easement Cure Period, the City may, in its sole discretion, elect to proceed to accept the Easement or extend the Easement Conveyance Date to allow for the District to correct the defects. If the District does not cure the condition, the City may elect not to proceed to accept the Easement, in which event the Parties shall negotiate in good faith to agree upon some alternative performance by the District that provides consideration to the City similar to the conveyance of the Easement Area.

J. On the Easement Conveyance Date, all improvements on the Easement Area shall have been removed and the Easement Area shall be free of structures or obstructions. All demolition work on the Easement Area shall be performed by the District or BSP East. The City shall cooperate with the District and BSP East in their efforts to obtain demolition and other permits for any such demolition and in obtaining approvals from utility providers to disconnect any utilities from the improvements.

K. With regard to the Certificate, BSP, BSP East and the District will cooperate with the City in its efforts to obtain the Certificate but shall have no responsibility for preparing any reports or other background documents associated with the City's efforts to obtain the Certificate. The District or BSP East shall provide the City access to the Easement Area to take photographs and otherwise prepare the application for the Certificate. The District, BSP East and BSP shall assist the City in preparing the application for the Certificate by providing all documents in their possession related to the certificate application process and or required application materials for the building located on the Easement Area, and signing all applications

necessary to request the Certificate and attending meetings or hearings if the applicant's presence is necessary or required at such meeting or hearing.

L. The City acknowledges (i) that the compounds of concern (“COCs”) identified in soil for remediation under the VCUP for the Easement Area include, but are not limited to, total petroleum hydrocarbons and trichloroethene and its daughter products and residual LNAPL; and (ii) the VCUP does not contemplate that soil excavation will be required for the property within or underlying the Easement Area to address COCs in soils, bedrock or groundwater. However, the City also acknowledges that the VCUP incorporates the MMP to be implemented during subsurface demolition and redevelopment activities both within and outside such remediation areas in the VCUP parcels, including the property within and underlying the Easement Area. Accordingly, the City hereby grants access to the Easement Area to the District and its officers, employees, agents, contractors, and subcontractors during the City's construction of improvements on the Easement Area to implement the MMP in accordance with the procedures set forth in **Exhibit E** as attached hereto and incorporated herein by reference (“**Remediation Procedures**”). In addition, following the City's final completion of the improvements on the Easement Area, the District shall continue to comply with the VCUP, MMP, NADs, and all other requirements of CDPHE relating to any Existing Contamination within the Easement Area and the property within and underlying the Easement Area. The City shall not be liable for and the District hereby releases claims against the City and its officers and employees arising out of (i) any environmental conditions existing on the District's property adjacent to the Easement Area and in the property within and underlying the Easement Area unless introduced or caused after the Easement Conveyance Date by the City or its officers, employees, agents, contractors, or subcontractors; (ii) any Existing Contamination within and under the Easement Area; and (iii) ongoing obligations of BSP, BSP East or the District with respect to Existing Contamination hereunder, except to the extent such claims arise out of (ii) or (iii) result from the negligence or willful misconduct of the City, or its officers, employees, agents, contractors, or subcontractors or their violation of the requirements of the Remediation Procedures, or any other obligations of the City under this Agreement or the Easement Area. However, except as set forth herein in relation to the City and its officers and employees, nothing in the foregoing shall be construed to release or limit any claims or causes of action the District may have against the City's agents, contractors, or subcontractors, licensees, permittees, invitees, or other parties acting under authority of the City, trespassers, or other third parties arising out of their use, occupancy, or activities in, on, or near the Easement Area. To the extent further remedial activities by the District within the property underlying the Easement Area are required for compliance with this Agreement or Environmental Laws after final completion of the Project, the City agrees to cooperate with the District in obtaining such access in accordance with City regulations. The District's obligations under this section are subject to adequate funding and appropriation.

M. The District or BSP currently owns and operates a bioremediation system and appurtenances (“**Bioremediation System**”), monitoring wells and point of compliance wells (collectively the Bioremediation System, monitoring wells and point of compliance wells are “**Environmental Systems**”) pursuant to the VCUP. The District will continue to own and operate the Environmental Systems following the Easement Area Conveyance Date. The City agrees to the District reserving, in the Easement Area, the right to own, operate, maintain, repair, and replace the Environmental Systems. The District through the Easement grants the City the

right to conduct Project work in relation to the remaining portions of the Environmental Systems, subject to measures to protect the Environmental Systems (the “**Well Protection Specifications**”). The District and the City shall cooperate to prepare mutually agreeable Well Protection Specifications prior to commencement of soil disturbing activities pursuant to the Easement and any changes thereto. Such Well Protection Specifications shall be substantially similar to the specifications attached as **Exhibit F**, subject to site-specific revisions mutually agreeable to the District and the City. The City shall be responsible for causing its contractors to implement the measures shown on the Well Protection Specifications to protect the Environmental Systems and cause its contractors to promptly repair damage to the Environmental Systems caused by the City or its employees, officers, agents, contractors, or subcontractors, and cause its contractors to cleanup any release of Hazardous Materials caused by such damage in accordance with Environmental Laws (“**Damage Cleanup**”). In the event of any such damage to the Environmental Systems, the City shall immediately notify the District, who shall provide specifications for such repair and Damage Cleanup and shall have the right to monitor such repair and Damage Cleanup. If the City’s contractors do not to commence such repair and Damage Cleanup, or does not commence such repair and Damage Cleanup within a reasonable time given the nature of the repair or Damage Cleanup, the District may perform such repair and Damage Cleanup and the City shall cause its contractor to reimburse the District for the reasonable costs thereof. The District’s obligations under this section are subject to adequate funding and appropriation.

N. The City, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the District, its directors, officers, employees, consultants and attorneys from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys’ fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages and Environmental Matters, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from the City’s use of the Easement Area as a roadway, or as a result of the environmental conditions or the presence of any Hazardous Materials at, on, in, under, upon, about, beneath or emanating from the Easement Area, except to the extent resulting from the District’s failure to fulfill its obligations set forth in **Exhibit E** hereto.

3. Hockey Stick Parcel

A. In exchange for conveyance to the City of the Easement as described in Section 2(A) above, the City shall convey to BSP or its designated assignee the Hockey Stick Parcel. Such conveyance shall be subject to the following conditions:

(i) At any time after the Effective Date, BSP may provide written notice to the City of its election to acquire the Hockey Stick Parcel. Within ninety (90) days after receipt of a written notice from BSP, and provided that all prerequisites to such conveyance as set forth in subsections (ii) through (vi) below are satisfied or are waived, the City shall convey the Hockey Stick Parcel to BSP or its designated assignee by quitclaim deed subject to

only those exceptions acceptable to BSP and subject to the BSP election set forth in subsection (v) below. The date for conveyance is referred to herein as the "**Hockey Stick Parcel Closing Date.**"

(ii) Upon request from BSP, the City will provide access to the Hockey Stick Parcel so that BSP may conduct any Phase I update or further Phase II environmental site assessment to evaluate the environmental condition of the Hockey Stick Parcel and shall cooperate with BSP if BSP elects to seek a NAD from CDPHE for such parcel prior to conveyance. BSP will coordinate any such environmental site assessments with the City's Department of Environmental Health. The City will take no action subsequent to the Effective Date that results in the introduction of new environmental contamination on the Hockey Stick Parcel.

(iii) In addition to the environmental review described in subsection (i) above, BSP shall have the right to inspect the physical condition of the Hockey Stick Parcel at BSP's sole expense.

(iv) Within ten (10) days after BSP's notice in Section 3(A)(i) above, the City shall deliver to BSP true copies of all lease(s) and survey(s) in the City's possession pertaining to the Hockey Stick Parcel and shall disclose to BSP all easements, liens or other title matters not shown by the public records of which the City has actual knowledge. BSP shall have the right to inspect the Hockey Stick Parcel to determine if any third party has any right in the Hockey Stick Parcel not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

(v) BSP may order a title commitment for the Hockey Stick Parcel for BSP's review.

(vi) Written notice from BSP of unmerchantability of title, any matter disclosed by the survey or title commitment for the Hockey Stick Parcel that is not acceptable to BSP, any environmental condition of the Hockey Stick Parcel, or any other matter disclosed by BSP's review of the title commitment that is not acceptable to BSP in its reasonable discretion shall be given to the City at least forty-five (45) days prior to the Hockey Stick Parcel Closing Date. If the City does not receive BSP's notice by such date, BSP shall be deemed to have accepted the condition of the Hockey Stick Parcel. If the City receives notice of any unsatisfactory condition(s), the City may, in its sole discretion, correct such unsatisfactory condition(s) within the period ending fifteen (15) days prior to the Hockey Stick Parcel Closing Date (the "**Hockey Stick Parcel Cure Period**"). The City may extend the Hockey Stick Parcel Cure Period and the Hockey Stick Parcel Closing Date for up to thirty (30) days in order to correct any such conditions. The City shall be obligated to remove any monetary liens encumbering the Hockey Stick Parcel. If the City does not correct such unsatisfactory condition(s) by the end of the Hockey Stick Parcel Cure Period, BSP may, in its sole discretion, elect to proceed to closing or extend the Hockey Stick Parcel Closing Date to allow for the City to correct the defects. If the condition is not cured by the City, BSP may elect not to proceed to closing, in which event the City and BSP shall negotiate in good faith to agree upon some alternative performance by the City that provides consideration to BSP similar to the conveyance of the Hockey Stick Parcel.

O. The City does not make, has not made, and specifically disclaims any representation or warranty, express or implied, regarding: (i) any Hazardous Materials or Environmental Matters at, on, under, or about the Hockey Stick Parcel; or (ii) compliance or non-compliance of the Hockey Stick Parcel with Environmental Laws.

P. BY PROCEEDING TO AND CLOSING THE CONTEMPLATED TRANSACTION, BSP EXPRESSLY AGREES THAT IT IS PURCHASING THE HOCKEY STICK PARCEL IN AN "AS IS, WHERE IS" CONDITION, WITH ALL FAULTS, AND THAT THE CITY MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE HOCKEY STICK PARCEL WHATSOEVER, AND BSP FURTHER AGREES THAT THE CITY SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE HOCKEY STICK PARCEL AND SHALL NOT BE BOUND IN ANY MANNER BY GUARANTEES, PROMISES, PROJECTIONS, OPERATING STATEMENTS, SET-UPS, OR OTHER INFORMATION PERTAINING TO THE HOCKEY STICK PARCEL, MADE, FURNISHED, OR CLAIMED TO HAVE BEEN MADE OR FURNISHED, BY THE CITY OR ANY OTHER PERSON OR ENTITY, INCLUDING ANY EMPLOYEE, AGENT, AFFILIATE, ATTORNEY, OR ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT THE CITY, WHETHER VERBALLY OR IN WRITING. BSP SHALL BE RESPONSIBLE FOR INVESTIGATING THE HOCKEY STICK PARCEL, AS PROVIDED FOR UNDER THE TERMS OF THIS AGREEMENT, AND SHALL NOT RELY ON ANY REPRESENTATION, WARRANTY, AND STATEMENT OR DUE DILIGENCE DOCUMENT PROVIDED BY THE CITY.

Q. BSP acknowledges that the value of the Hockey Stick parcel accounts for potential Damages and Environmental Matters, and, for itself and its affiliates and for their respective successors and assigns, hereby waives its right to recover from, and forever releases and discharges, and forever covenants to release and discharge, the City from, any and all demands, claims, liabilities, obligations, actions, suits, legal or administrative proceedings, losses, damages, civil and criminal fines and penalties, liens, assessments, judgments, settlements, deficiencies, response costs and remediation costs, or other costs or expenses whatsoever (including, without limitation, attorneys' fees, witness and consultant fees, arbitration fees and court costs), including without limitation, all Damages and Environmental Matters, whether direct or indirect, known or unknown, foreseen or unforeseen and whether or not well founded in fact or in law, that are caused by or arise or may arise from, out of or as a result of the environmental conditions or the presence of any Hazardous Materials (defined above at, on, in, under, upon, about, beneath or emanating from the Hockey Stick Parcel).

4. Agreements Regarding VP East Regional Detention and Water Quality Pond and Associated Storm Drainage

A. The Parties acknowledge that this Agreement is intended to serve as the written agreement contemplated by Sections 4(A)(i) and 6(B)(ii)(a)(4) of the Development Agreement regarding regional detention and water quality pond and associated storm drainage facilities within VP East.

B. In addition to the requirements set forth in the IMP regarding detention and storm drainage facilities within VP East, the District agrees to meet the following requirements:

(i) The water surface area of Pond A shown on page 34 of the IMP shall not occupy more than 0.83 acres of the current VP East park property.

(ii) The graded slopes of Pond A shall not exceed a 3:1 H:V, Horizontal to Vertical ratio (excluding any inlet or outlet control structures that may require reinforced concrete retaining walls).

(iii) Any walls other than those associated with the inlet and outlet control structures of Pond A shall be prohibited within the portion of Pond A lying within VP East park property.

(iv) The design of Pond A shall require approval of the Department of Parks, the Department of Environmental Health and the Wastewater Division of the Department of Public Works and shall be designed to function with the remainder of the park and be aesthetically pleasing.

(v) Design and construction of Pond A will take into account the findings contained in the Phase II Environmental Site Assessment, Vanderbilt Park East, 800-898 South Santa Fe Drive, dated June 20, 2016, prepared by Stantec for the City and County of Denver.

(vi) The City will cooperate with BSP to work with CDOT to provide any necessary right-of-way permits or licenses associated with the pond outlet crossing beneath South Santa Fe Drive and into the South Platte River channel.

(vii) Maintenance of VPE and Pond A shall be in accordance with the Intergovernmental Agreement between the City and the District entered into in connection with the Development.

5. **Open Space.** The Parties acknowledge that Section 4 of the Development Agreement and the IMP address the open space requirements for the Site. Such open space will be shown as lots or tracts in the subdivision plats prepared for the Site, shall be owned and maintained by the District and shall be publicly accessible and usable.

6. **Valuation of Transactions**

A. The Parties acknowledge that BSP and the City have conducted appraisals of the Hockey Stick Parcel and the Easement Area. The Parties acknowledge that the net value to the City of this transaction is \$6,130,000.00 (the “**Transaction Value**”).

B. The Parties acknowledge that the Transaction Value will be considered a developer advance from BSP East to the District or its designee and will be reimbursable to BSP East by the District or its designee as a TIF eligible expense in accordance with the District’s agreement with DURA. The developer advance will be recognized at the time of conveyance of

the Easement Land from BSP East to the District, and will begin accruing interest on the date that BSP East provides notice to the City and the District that the Lease has been terminated and BSP East is no longer receiving income from the Lease, subject to approval of DURA in accordance with the provisions of the redevelopment agreement between the District and DURA.

7. Cooperation Regarding Easement Relinquishment. The City will cooperate with BSP East on a relinquishment ordinance to terminate the City's interests in Permanent Easement 121C, recorded in the real property records of the City and County of Denver on March 3, 2015 at Reception No. 2015026592, and, if such terminations occur, at the City's cost, remove the underlying roadway within those easements once the Kentucky realignment is in place. In addition, the City will assist BSP East in obtaining consent from the Regional Transportation District ("RTD") to relinquish RTD's access easement on West Kentucky Avenue recorded at Reception No. 9400000229.

8. Environmental Remediation Contribution. BSP will advance to the District and will cause the District to deposit the amount of Two Hundred Thousand and no/100 (\$200,000.00) to be used toward the cost of remediation of the lake in Vanderbilt Park and stabilization of the banks, upon the earlier to occur of the following: (1) completion of the Kentucky Bridge and sale of the southernmost parcel between the consolidated main line and the South Platte River, or (2) the sale by BSP to a third party of all or a portion of Block 11 (other than transfers of any portion of Block 11 to the District or the City). Such amount shall be placed in a dedicated City account may be used by the City for remediation of the Vanderbilt Park lake and stabilization of the banks. The amount paid to the District hereunder will be considered a developer advance from BSP to the District and will be reimbursable to BSP by the District as a TIF eligible expense in accordance with the District's agreement with DURA.

9. General Provisions

A. Time is of the Essence. It is understood and agreed between the parties that time is of the essence hereof; and all the agreements herein contained shall be binding upon and for the benefit of each Party's successors and assigns.

B. Default by City. A "breach" or "default" by the City under this Agreement shall be defined as the City's failure to fulfill or perform any material obligation of the City contained in this Agreement.

C. Default by BSP or BSP East. A "breach" or "default" by BSP or BSP under this Agreement shall be defined as BSP's or BSP East's failure to fulfill or perform any material obligation of BSP or BSP East, as the case may be, contained in this Agreement.

D. Default by the District. A "breach" or "default" by the District under this Agreement shall be defined as the District's failure to fulfill or perform any material obligation of the District contained in this Agreement.

E. Notices of Default; Cure Period. In the event of a default by a Party under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default, at the address specified in Section 10, and the defaulting Party shall have thirty (30)

days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure.

F. Remedies. If any default under this Agreement is not cured as described above, the non-defaulting Party shall have all remedies available at law or in equity, including an action for injunction and/or specific performance, but the Parties hereby waive the right to recover, to seek and to make any claim for damages for default under this Agreement, or for attorneys' fees or costs.

G. Authority to Execute. The Parties each represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind each Party.

H. Cooperation of the Parties. If any legal or equitable action or other proceeding is commenced by a third party challenging the validity of any provision of this Agreement, the Parties shall reasonably cooperate in defending such action or proceeding, each to bear its own expenses in connection therewith. Unless the Parties otherwise agree, each Party shall select and pay its own legal counsel to represent it in connection with such action or proceeding.

I. Assignment. Except with regard to BSP's rights under Section 3A to designate an assignee to receive conveyance of the Hockey Stick Parcel, the rights and obligations under this Agreement may not be assigned to any entity without the prior written consent of the other Parties. If this Agreement is assigned, all the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors, assigns, heirs and personal representatives of the respective parties. BSP and BSP East shall have the right to assign or transfer, without the prior written consent of the other Parties, all or any portion of its interests, rights and obligations under this Agreement to third parties acquiring an interest or estate in the Site, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Site, provided that to the extent BSP or BSP East assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of BSP's or BSP East's obligations under this Agreement by its assignee shall thereby relieve BSP or BSP East, as the case may be, of any further obligations under this Agreement with respect to the matter so assumed.

J. Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid, void or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, so long as each party receives substantially all the benefits contemplated in this Agreement and so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining.

K. When Rights and Remedies Not Waived. In no event shall any performance hereunder constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach or default exists shall in no way impair or prejudice any right of remedy available with respect to such breach or default. Further, 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 other default or breach.

L. Subject to Local Laws: Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and, except as otherwise specified, the Ordinances and regulations of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

M. Extensions: Amendments. Except as otherwise provided for herein, no prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. Except as otherwise provided for herein, no subsequent notation, renewal, addition, deletion, or other amendment to or termination of this Agreement shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties. City Council approval shall be required for amendments only if and to the extent required by the Charter.

N. Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

O. No Third-Party Beneficiary. It is the intent of the Parties that no third party beneficiary interest, including, without limitation, the Benefitted Parties, is created in this Agreement except for an assignment pursuant to this Agreement. The Parties are not presently aware of any actions by them or any of their authorized representatives which 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.

P. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document.

Q. Appropriation. 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. All obligations of the District under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the Board of Directors of the District for the purposes of this Agreement.

R. Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of any Party

hereto, such Party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

S. No Personal Liability. No elected official, director, officer, agent, manager, member or employee of the City, BSP, BSP East or the District shall be charged personally or held contractually liable by or to the other Parties 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.

T. Conflict of Interest by City Officers. The City 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.

U. Colorado Governmental Immunity Act. The Parties understand and agree that the City and the District are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

V. No Authority To Bind City To Contracts. BSP and BSP East lack any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.M.R.C.

W. No Discrimination In Employment. In connection with the performance of work under this Agreement, BSP, BSP East and the District agree 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, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and BSP, BSP East and the District further agree to insert the foregoing provision in all subcontracts pertaining to any public work.

X. Findings. The City hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare and the provisions of this Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the City.

Y. Further Assurances. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges under this Agreement.

Z. Police Powers. Except as expressly provided herein, nothing in this Agreement shall impair the City's exercise of its police powers.

10. **Notices.** Any notices, demands or other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally, delivered by overnight courier service, or sent by certified mail, postage prepaid, return receipt requested, addressed to

the Parties at the addresses set forth below, or at such other address as any Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given at the time it is personally delivered, the next business day following being placed with any reputable overnight courier service for next business day delivery, or, if mailed, on the third business day after such mailing.

If to the City:

Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to

Denver City Attorney
1437 Bannock Street, Room 353
Denver, Colorado 80202

Executive Director of Public Works
201 W. Colfax, Dept. 608
Denver, CO 80202

Chief Financial Officer
201 W. Colfax, Dept. 1010
Denver, CO 80202

Executive Director of Parks and Recreation
201 W. Colfax, Dept. 601
Denver, CO 80202

Executive Director of Community Planning
and Development
201 W. Colfax, Dept. 205
Denver, CO 80202

Executive Director of Environmental Health
200 W. 14th Ave
Denver, CO 80204

If to BSP or BSP East:

BSP Denver, LLC
2420 17th St., 3rd Floor
Denver, CO 80202
Attn: Dan Jacobs, Manager

With copies to:

Broadway Station Development Company
2420 17th St., 3rd Floor Denver, CO 80202

Attn: Lisa Ingle, Development Project
Manager

and:

Kaplan Kirsch & Rockwell
Attn: Sarah M. Rockwell and
Stephen H. Kaplan
1675 Broadway, Suite 2300
Denver, CO 80202

Broadway Station Metropolitan District
No.1
2420 17th St., 3rd Floor
Denver, CO 80202
Attn: Lisa Duker-Ingle, Dan Jacobs

and

Collins Cockrel & Cole
390 Union Blvd. Suite 400
Denver, CO 80228-1556
Attn: Paul Cockrel

EXECUTED as of the Effective Date.

BROADWAY STATION PARTNERS, LLC,
a Delaware limited liability company

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, as _____ of **Broadway Station Partners, LLC**, a Delaware limited liability company.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

BSP EAST, LLC, a Delaware limited liability company

By: Broadway Station Partners, LLC, Sole Member

By: Frontier Renewal LLC, its Manager

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, as _____ of Frontier Renewal LLC, Manager of Broadway Station Partners, LLC, Sole Member of **BSP East, LLC**, a Delaware limited liability company.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

BROADWAY STATION METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, as _____ of **Broadway Station Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

[City Signature Block]

Exhibits

- Exhibit A: Hockey Stick Parcel
- Exhibit B: Easement Land and Easement Area
- Exhibit C: Form of Permanent Easement
- Exhibit D: VCUP
- Exhibit E: Remediation Procedures
- Exhibit F: Well Protection Specifications

