

**SETTLEMENT AGREEMENT**  
**Denver Rock Island Railroad and City and County of Denver**  
**National Western Center Project**

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the state of Colorado (the “**City**”) and **THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56<sup>th</sup> Avenue, Commerce City, Colorado 80022 (“**DRIR**”). The City and DRIR are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS:

1. The City, along with partners Colorado State University and the Western Stock Show Association, has undertaken an ambitious public project to build and operate a new two hundred fifty (250) acre state-of-the-art, multi-purpose campus (hereinafter referred to as the “**Campus**”). The Campus would (a) house the National Western Stock Show; (b) serve as a hub for year-round creative, experiential education for all ages and for research and commercial activity that promotes, supports, and helps to preserve the western lifestyle while highlighting innovation and global issues of health, food systems, food security, water, and the environment; and (c) provide an attractive environment for additional agricultural business and science investments that will increase other economic and workforce development activities in the surrounding neighborhoods, to encourage revitalization of those neighborhoods, and position Colorado as an agricultural innovations cluster leader (together, the City’s activities at the Campus are the “**Project**”).

2. DRIR is a Class III short line rail carrier that has for over twenty-five (25) years provided customers with rail service connections to two class I railroads. Freight railroads are fuel efficient, better for the environment than trucks, and help reduce highway gridlock. Rail has historically been and continues to be important to the businesses in the Globeville, Elyria, and Swansea neighborhoods in which the Campus is located.

3. DRIR owns land, and other property and rights, within the land area planned for the Campus, including a parcel located at 5055 West River Drive, Denver CO (the “**Cherokee Parcel**”), a sliver of real property located south of Race Court, and other real and personal property interests throughout the Campus (together, the “**DRIR Property**”).

4. In order for the City to undertake the construction of the Campus, it is necessary to relocate the existing rail corridors from the middle of the campus (the “**National Western Drive Corridor**”) and along the river (the “**River Corridor**”) from their current locations to the center of the Campus (the “**New Corridor**”), along the existing BNSF and RTD rail lines. The City is prepared to request approval from the state Public Utilities Commission (“**PUC**”) for crossings by the New Corridor over public rights-of-way. In addition, the City has planned to acquire from DRIR real and personal property currently located on the Campus, including the Cherokee Parcel.

5. In lieu of adverse proceedings between the Parties at the federal Surface Transportation Board (“**STB**”), PUC, and in state and federal court, the Parties have agreed to settle all claims between them regarding DRIR’s rail operations and real and personal property located on the Campus.

NOW, THEREFORE, it is mutually agreed by the City and DRIR as follows:

#### AGREEMENT

1. TERM. This Agreement shall commence as of the date shown on the executed City signature page (“**Effective Date**”), and shall terminate once all of the requirements of the Agreement have been fulfilled (“**Termination Date**”), unless otherwise terminated or extended as provided herein. Notwithstanding the foregoing, the Parties may amend this Agreement at any time to extend its term for such additional years as may be agreed upon by the Parties, provided that any such extension is approved and executed in the same manner as this Agreement.

2. CITY COMPLETION OF NEW RAIL LINE. The City shall construct and the Parties shall maintain and operate the New Corridor pursuant to the Rail Construction, Operations and Maintenance Agreement of even date herewith.

3. SETTLEMENT OF ALL CLAIMS. Upon execution of this Agreement, the City and DRIR shall coordinate to dismiss or achieve other mutually-agreed upon resolution of all pending litigation as follows:

(a) City v. DRIR 2018CV34300 (“**Quiet Title Action**”): DRIR shall stipulate to the dismissal with prejudice of its counterclaims and entry of judgment for the City

on its Quiet Title Claim. Said stipulation shall provide that regardless of the entry of the judgment, City shall not interfere with DRIR's rail operations along the National Western Drive tracks until the date of Closing, as identified herein.

(b) DRIR v. City 1:10-cv-00300 (“**Federal Action**”): The Parties shall enter into a stipulation dismissing the lawsuit with prejudice.

(c) City and County of Denver – Verified Petition for Declaratory Order, STB Docket No. FD 36263 (“**STB declaratory proceeding**”): The Parties shall jointly file a motion to dismiss the petition, and shall cooperate to obtain the support of Iron & Metals, Inc., and other parties who have commented in the proceeding, for such motion.

(d) DRIR v. City, STB Docket No. NOR 42162 (“**STB Complaint**”): DRIR shall stipulate to the dismissal with prejudice of its complaint.

(e) Each Party shall bear its own costs and fees for each action.

4. DISCONTINUANCE OF SERVICE ON CURRENT RAIL FACILITIES ON CAMPUS.

(a) The City may, at any time, demolish, remove or otherwise dispose of the rail facilities identified as tracks 420 and 421, as the same are located within the area covered by the Quiet Title Action. DRIR shall discontinue use of both the National Western Drive Corridor and the River Corridor upon the conclusion of Burn-In (as defined in Section 2.A. of the Rail Construction, Operations and Maintenance Agreement) and shall transfer ownership of the personal property comprising the tracks and adjacent rail facilities, except the switches salvaged pursuant to Section 4.G. of the Rail Construction, Operations and Maintenance Agreement, in the National Western Drive Corridor and the River Corridor to the City in a bill of sale in the form of **Exhibit A** (the “**Bill of Sale**”).

(b) DRIR acknowledges that it is the intent of the parties that DRIR's federally granted freight rail operating authority shall transfer to the New Corridor after Burn-In.

5. REAL PROPERTY TRANSFERS.

(a) To the City. Upon payment of the Cash Settlement, defined below, DRIR shall sign and provide to Land Title (the “**Title Company**”) a Special Warranty Deed in the form attached as **Exhibit B** for the DRIR Cherokee Property (the “**DRIR Warranty Deed**”). In addition and at the same time, DRIR shall sign and provide to the Title Company a Quitclaim Deed in the form attached as **Exhibit C** conveying all interests DRIR and related parties own or may own on the Campus (the “**DRIR Quitclaim Deed**”). DRIR agrees to execute any other deed or release necessary to transfer title of any fee-simple owned property, easement, or other real property interest to the City. The Parties shall execute an Escrow Agreement instructing the Title Company to record the DRIR Warranty Deed, the DRIR Quitclaim Deed, and any other deed or release that the Title Company may request to transfer to the City any DRIR interest in real property on the Campus upon the day after the conclusion of Burn-In (the “**Closing**”). General taxes and assessments for the year of closing and the most recent rents, water, sewer, other utility charges and any other customary items shall be prorated to the dates of Closing and shall be paid by DRIR at or before Closing.

(b) To DRIR. Upon completion of the construction of the New Corridor, the City will grant to DRIR easements in the form attached hereto as **Exhibit D**. These easements grant to DRIR (i) DRIR’s use of the City’s real property for the location and operation of their rail facilities in the New Corridor, (ii) access for DRIR to the New Corridor on the south end of the Campus, and (iii) an access lane adjacent to the New Corridor between the western property line of the BNSF right-of-way and the usable clear track limit to the north. The easement limits the City’s and its tenants use of the private road crossing shown on the Plans attached to the Rail Construction, Operation and Maintenance Agreement.

6. REAL PROPERTY OPERATIONS AND MAINTENANCE: From the Effective Date until the Closing or earlier termination of this Agreement, DRIR: (a) shall operate and maintain the DRIR Property in the manner in which the DRIR Property is currently being operated and maintained by DRIR; (b) shall not enter into any new lease, lease modification, lease extension or other occupancy or use agreement without obtaining City's prior written consent, which consent may be withheld or delayed in City's sole and absolute discretion; and (c) shall not enter into any contracts or commitments that will survive the Closing other than a contract that is terminated on less than thirty (30) days' notice.

7. CASH SETTLEMENT. In addition to the obligations contained herein, and in the Rail Construction, Operation and Maintenance Agreement and the Rail Operating Easement and Use Agreement, the City shall pay to DRIR a cash payment totaling Sixteen Million Seven Hundred Fifty Thousand Dollars (\$16,750,000.00) in full settlement of all claims by DRIR against the City related to the City's National Western Center project (the "**Cash Settlement**"). Specifically, DRIR is being reimbursed for the value of its real property interests on the Campus and the cost of relocation, as well as claims related to the costs associated with clear track replacement, administrative costs, professional services costs, and disruption and inconvenience, including lost business claims and operational changes incurring additional costs. Such payment shall be made by the City to DRIR as soon as is practicable, but in no event more than 21 days after full execution of this Agreement, acknowledging that this and related agreements must be approved by City Council prior to such payment.

8. COMMEMORATIVE DISPLAY. The City will provide a commemorative display describing the historic role of rail and DRIR on the Campus for permanent display in the grand lobby entrance of the historic 1916 Livestock Exchange building (the "**Livestock Exchange**"). Should the City transfer ownership of the Livestock Exchange, it shall require as a condition of sale the continued location of such a display within the grand lobby entrance.

9. WAIVER OF ALL CLAIMS. In consideration of the promises, covenants, and obligations set forth in this Agreement, upon full execution of this Agreement and the payment of the Cash Settlement, DRIR releases and discharges the City, and its successors, or assigns or any of them, including any departments, appointed or elected officials, officers, employees, members, representatives or agents from the date of execution of this Agreement of and from any and all present and known claims, demands, obligations, actions, and causes of action relating to the current acquisition of DRIR's Property and rights within the Campus and the

relocation of DRIR's rail operations within the NWC to the New Corridor and elsewhere as part of the Project. This waiver does not extend to any claims or actions arising under this Settlement Agreement, the Rail, Construction and Maintenance Agreement, or the Rail Operating Easement and Use Agreement.

In consideration of the promises, covenants, and obligations set forth in this Agreement, upon full execution of this Agreement the City releases and discharges DRIR, and its successors, or assigns or any of them, including any officials, officers, employees, members, representatives or agents from the date of execution of this Agreement of and from any and all present and known claims, demands, obligations, actions, and causes of action relating to DRIR's actions or activities within or related to the Campus on or before the effective date of this Agreement. This waiver does not extend to any claims or actions arising under this Settlement Agreement, the Rail, Construction and Maintenance Agreement, or the Rail Operating Easement and Use Agreement.

10. COOPERATION IN CITY'S REGULATORY ACTIONS. DRIR shall cooperate with and support the City's regulatory efforts, which may include proceedings before the STB for all matters concerning the discontinuance or relocation of rail facilities on the River Corridor and the National Western Drive Corridor, or before the Colorado PUC, regarding the closure, modification or opening of any rail/public road crossings as part of the Project. DRIR will not be responsible for securing the cooperation at the STB or PUC of any other rail entity.

11. APPROPRIATION. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

12. TAXES, DEBTS, LIENS & LICENSES. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* DRIR shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

13. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of DRIR involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

14. APPLICABLE LAW AND VENUE. The Parties acknowledge and agree that this Agreement shall be governed by and construed, to the extent applicable, in accordance with federal law, the laws of the state of Colorado and the Charter and Revised Municipal Code of the City and County of Denver, and that the Parties shall perform their obligations hereunder in accordance with applicable laws. In the event of any dispute regarding the enforcement of this Agreement, exclusive jurisdiction and venue shall lie in the District Court in and for the City and County of Denver, except to the extent that any such dispute implicates federal preemption, regulation or control of rail operations, in which event jurisdiction shall be in the Surface Transportation Board or the United States District Court for the District of Colorado.

15. ASSIGNMENT AND ENCUMBRANCE OF INTERESTS. Neither Party shall assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the written consent of the other Party. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

16. COMPLETE INTEGRATION; AMENDMENTS. This Agreement is intended as the complete integration of all understandings between the Parties with respect to the matters addressed in this Settlement Agreement. Except for other documents contemplated or necessitated by this Agreement, no prior or contemporaneous understanding, addition, deletion or other amendment hereto shall have any force or effect whatsoever unless embodied in this Agreement. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment to this Agreement executed by the Parties, their successors, or assigns, approved and executed in the same manner as this Agreement.

17. NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating

to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other party or third person on such Agreement. It is the express intention of the Parties that any person other than the parties hereto receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. NON-WAIVER. A failure by any Party to take any action with respect to any default or violation by the other party of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

19. FORCE MAJEURE. If any Party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such Party, upon giving notice and reasonably full particulars to the other Parties, shall be relieved of such obligation or condition during the continuance of such inability. The term “force majeure” shall include acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, and any laws, orders, rules, regulations, acts, or restraints of any government or governmental body or authority, civil or military. Written notice of any claim of inability to perform or comply due to force majeure must be promptly given as provided in paragraph 31 below.

20. REMEDIES.

(a) The Parties acknowledge that rail relocation is on the critical path for the City’s project such that any failure by either Party to comply with this Agreement constitutes a threat of real, immediate, and irreparable injury to the other Party for which there is no plain, speedy, and adequate remedy at law and that the status quo under this Agreement requires completion of the City’s project, including the above described removal of the existing rail lines following completion and transfer of the New Corridor to DRIR. The Parties further acknowledge that the Parties are entitled to specific performance of all the other Party’s obligations under this Agreement.



(b) In no event will any payment or other action by a Party constitute or be construed to be a waiver by that Party of any breach of covenant or default that may then exist on the part of the other Party. No payment, other action, or inaction by a Party when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

(c) Costs. Expert Fees, Attorneys' Fees. If any legal action is filed or maintained by either Party in relation to this Agreement, each Party shall bear its own costs, expert fees, and reasonable attorneys' fees.

21. NOTICES. All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered as provided in this paragraph (unless the means of delivery is otherwise expressly specified in this Agreement). Notices shall be deemed delivered upon receipt, if delivered personally or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the City:

Executive Director of the Mayor's  
Office of the National Western Center  
Webb Municipal Office Building  
5125 Race Court  
Denver, CO 80216

With a copy to:

City Attorney  
Denver City and County Building  
1435 Bannock St., Room 353  
Denver, CO 80202

If to DRIR:

General Manager  
Denver Rock Island Railroad  
3400 E. 56<sup>th</sup> Ave.  
Commerce City, CO 80022

With a copy to:

Corporate Secretary  
The Denver Rock Island Railroad

3400 E. 56<sup>th</sup> Ave.  
Commerce City, CO 80022

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

22. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

23. LEGAL AUTHORITY.

(a) The Parties each warrant that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person(s) signing and executing this Agreement on behalf of the Parties do hereby warrant and guarantee that the signatory(ies) below has been fully authorized to execute this Agreement and to validly and legally bind such Parties to the obligation and performance of all the terms, covenants, and conditions herein set forth.

24. PARAGRAPH HEADINGS. The captions and headings set forth in this Agreement are for convenience of reference only and shall not be construed so as to define or limit its terms and provisions.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

26. ORDER OF PRECEDENCE. In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INUREMENT. The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

28. SURVIVAL OF CERTAIN PROVISIONS. The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein.

29. EXECUTION OF AGREEMENT. This Agreement shall not take effect until approved by Denver City Council and DRIR's Board of Directors, respectively, and signed by all authorized DRIR and City officials, including DRIR's General Manager and legal counsel, and, for the City, the Mayor, the Clerk and Recorder and the Auditor.

30. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by either Party in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

- Exhibit A**      **Bill of Sale**
- Exhibit B**      **Special Warranty Deed**
- Exhibit C**      **Quitclaim Deed**
- Exhibit D**      **Rail Operating Easement and Use Agreement**

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

PWADM-201951151-00  
THE DENVER ROCK ISLAND RAILROAD

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:

\_\_\_\_\_  
Mayor

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

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Manager of Finance

By:

\_\_\_\_\_  
Auditor

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

PWADM-201951151-00  
THE DENVER ROCK ISLAND RAILROAD

By: 

Name: Thomas Z. Mars  
(please print)

Title: President  
(please print)

ATTEST: [if required]

By: 

Name: Jason Travers  
(please print)

Title: General Manager  
(please print)

**Exhibit A to the Settlement Agreement**  
**Bill of Sale**

**BILL OF SALE**

**THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56<sup>th</sup> Avenue, Commerce City, Colorado 80022 (“Seller”), for and in consideration of Ten Dollars, the receipt and sufficiency of which are hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto to the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“Purchaser”), and Purchaser’s successors and assigns, the personal property described herein, located at the National Western Center, all as depicted and described in Exhibit A, Denver, Colorado (the “Property”), as of the Effective Date of this Bill of Sale, which Effective Date shall be the date of the “Closing” as defined in the Settlement Agreement:

See Exhibit A, attached hereto and incorporated herein.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale this \_\_\_\_ day of September 2019.

THE DENVER ROCK ISLAND RAILROAD

BY: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF PERSONAL PROPERTY WITHIN NATIONAL WESTERN  
CENTER

All of Seller's right title and interest in (1) rail, ties, ballast, spikes, tie-plates, bolts, and angle irons (collectively, the "Tracks"), (2) any personalty left by Seller, after the Effective Date of this Bill of Sale, all within the campus of the National Western Center, described and depicted as follows:

**NATIONAL WESTERN CENTER CAMPUS**

A PART OF THE SOUTH HALF OF SECTION 14, A PART OF THE NORTH HALF OF SECTION 23, AND A PART OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST, OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID SOUTH HALF OF SECTION 14 AND THE EAST LINE OF FRANKLIN ST.;

THENCE SOUTHERLY, ALONG SAID EAST LINE OF FRANKLIN ST. TO THE NORTHEASTERLY LINE OF RACE CT.;

THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF RACE CT. AND THE EXTENSION OF THE NORTHEASTERLY LINE OF SAID RACE CT. TO THE SOUTHEASTERLY LINE OF BRIGHTON BLVD.;

THENCE SOUTHERLY ALONG THE SOUTHEASTERLY AND EASTERLY LINE OF SAID BRIGHTON BLVD. TO THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF 44<sup>TH</sup> ST.;

THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID 44<sup>TH</sup> ST. AND THE EXTENSION OF THE SOUTHWESTERLY LINE OF SAID 44<sup>TH</sup> ST. TO THE SOUTHERLY LINE OF 46<sup>TH</sup> AVE.;

THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF 46<sup>TH</sup> AVE. TO THE NORTHWESTERLY LINE OF THE CHICAGO BURLINGTON AND QUINCY RAILROAD MAINLINE;

THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF THE CHICAGO BURLINGTON AND QUINCY RAILROAD MAINLINE TO THE WESTERLY LINE OF THE OFFICIAL CHANNEL OF THE SOUTH PLATTE RIVER;

THENCE NORTHERLY ALONG SAID WESTERLY LINE OF THE OFFICIAL CHANNEL OF THE SOUTH PLATTE RIVER TO THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 14;

THENCE EASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH:



THAT PARCEL OF LAND DESCRIBED IN WARRANTY DEED RECORDED OCTOBER 1, 2014 AT RECEPTION NO. 2014119366 IN THE OFFICE OF THE CLERK AND RECORDER, CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED THEREIN AS FOLLOWS:

LOTS 12 THROUGH 18, INCLUSIVE, BLOCK 43, KEENER'S SUBDIVISION, TOGETHER WITH THE WEST HALF OF THE VACATED ALLEY ADJOINING SAID LOTS, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

TOGETHER WITH:

THOSE PARCELS OF LAND DESCRIBED IN SPECIAL WARRANTY DEED RECORDED MARCH 11, 2015 AT RECEPTION NO. 2015030423 IN THE OFFICE OF THE CLERK AND RECORDER, CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED THEREIN AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND LOCATED IN LOTS 19 TO 25, INCLUSIVE, BLOCK 43, KEENER'S SUBDIVISION AND THE EAST 1/2 OF VACATED ALLEY LYING WEST OF AND ADJACENT TO SAID LOTS, AND ALSO LOTS 12 TO 25, INCLUSIVE, BLOCK 42, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING ADJACENT TO AND BETWEEN SAID LOTS, AND THE VACATED WILLIAMS ST. LYING ADJACENT TO AND BETWEEN SAID BLOCK 42 AND 43 KEENER'S SUBDIVISION IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID BLOCK 43 WHICH IS 120.0 FEET EAST OF THE SOUTHWEST CORNER OF SAID BLOCK 43; THENCE NORTH, PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 190.0 FEET; THENCE EAST, PARALLEL WITH THE NORTH LINE OF 48TH AVENUE, A DISTANCE OF 420.0 FEET TO THE NORTHEAST CORNER OF LOT 25, BLOCK 42, KEENER'S SUBDIVISION; THENCE SOUTH PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 190.0 FEET TO THE SOUTHEAST CORNER OF LOT 19, BLOCK 42, KEENER'S SUBDIVISION, WHICH POINT IS ON THE NORTH LINE OF 48TH AVENUE; THENCE WEST ALONG THE NORTH LINE OF 48TH AVENUE, A DISTANCE OF 420.0 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PARCEL OF LAND LOCATED IN LOTS 9, 10, 11, AND 26, 27, 28, BLOCK 43, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS, AND ALSO LOTS 9, 10, 11 AND 26, 27, 28, BLOCK 42, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS, AND VACATED WILLIAMS STREET, LYING

BETWEEN AND ADJACENT TO SAID BLOCKS 42 AND 43, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), WHICH IS 190.0 FEET NORTH OF THE SOUTHWEST CORNER OF BLOCK 43, KEENER'S SUBDIVISION; THENCE NORTH ALONG THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 63.8 FEET; THENCE NORTH 89°55' EAST, A DISTANCE OF 540.0 FEET; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 62.63 FEET TO A POINT 190.0 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 42, WHICH POINT IS THE SOUTHEAST CORNER OF LOT 26, BLOCK 42, KEENER'S SUBDIVISION; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID BLOCKS 42 AND 43, KEENER'S SUBDIVISION, A DISTANCE OF 540.0 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER (SE 1/4) SOUTHEAST QUARTER (SE 1/4) SECTION 14, TOWNSHIP 3 SOUTH, RANGE 68 WEST AND IN LOTS 1-9, INCLUSIVE, AND LOTS 28-36, INCLUSIVE, BLOCK 43, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS; AND ALSO LOTS 1-9, INCLUSIVE, AND LOTS 28-36, INCLUSIVE, BLOCK 42, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS; AND VACATED WILLIAMS STREET, LYING BETWEEN SAID BLOCKS 42 AND 43 AND VACATED EAST 49TH AVENUE, LYING BETWEEN THE WEST LINE OF SAID BLOCK 43 AND THE EAST LINE OF SAID BLOCK 42 IN THE CITY AND COUNTY OF DENVER. STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

BEGINNING AT A POINT ON THE EAST LINE OF GILPIN STREET (BRIGHTON BLVD.), WHICH IS 253.8 FEET NORTH OF THE SOUTHWEST CORNER OF SAID BLOCK 43; THENCE NORTH, ALONG THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 323.0 FEET TO A POINT 161.3 FEET SOUTH OF THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF BRIGHTON BLVD. AND THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.); THENCE NORTH 89°55' EAST, A DISTANCE OF 540.0 FEET; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 323.0 FEET; THENCE SOUTH 89°55' WEST, A DISTANCE OF 540.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN THE CITY AND COUNTY OF DENVER.

EXCEPT THAT PORTION CONVEYED TO THE CITY AND COUNTY OF DENVER BY SPECIAL WARRANTY DEED RECORDED MAY 8, 1995 AT RECEPTION NO. 9500051856.

ALSO EXCEPTING THEREFROM THAT PARCEL OF LAND DESCRIBED IN  
BOOK 4709, AT PAGE 424 OF THE CITY AND COUNTY OF DENVER, STATE OF  
COLORADO, CLERK AND RECORDERS OFFICE.

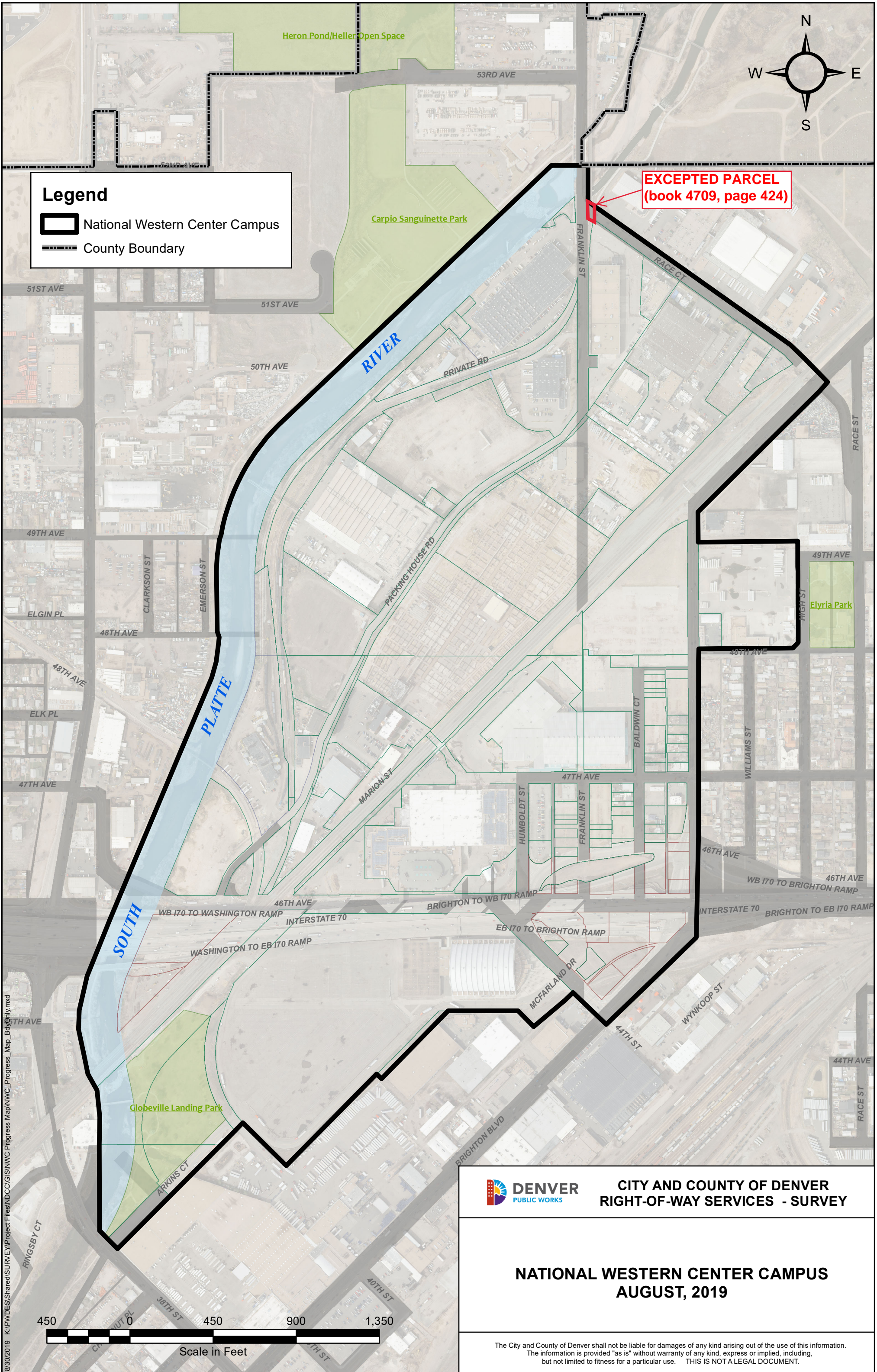




### Legend

- National Western Center Campus
- County Boundary

**EXCEPTED PARCEL**  
(book 4709, page 424)



**CITY AND COUNTY OF DENVER  
RIGHT-OF-WAY SERVICES - SURVEY**

## **NATIONAL WESTERN CENTER CAMPUS AUGUST, 2019**

The City and County of Denver shall not be liable for damages of any kind arising out of the use of this information. The information is provided "as is" without warranty of any kind, express or implied, including, but not limited to fitness for a particular use. THIS IS NOT A LEGAL DOCUMENT.

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**Exhibit B to the Settlement Agreement  
Special Warranty Deed for Cherokee Property**

After recording, return to:  
Division of Real Estate  
City and County of Denver  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202

## SPECIAL WARRANTY DEED

**THIS SPECIAL WARRANTY DEED** (“Deed”), made as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by **DENVER ROCK ISLAND RAILROAD, INC.**, a Colorado Corporation, whose address is 3400 East 56<sup>th</sup> Avenue, Commerce City, Colorado 80022 (“Grantor”) to the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation of the State of Colorado and home rule city, whose address is 1437 Bannock Street, Denver, Colorado 80202 (“Grantee”).

WITNESSETH, that the Grantor, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and by these presents does hereby grant, bargain, sell, convey and confirm, unto the Grantee, and its successors and assigns forever, the real property described below, together with all improvements thereon, owned by the Grantor situate, lying and being in the City and County of Denver, State of Colorado, and being more particularly described on **Exhibit A** attached hereto and incorporated herein (“Property”);

and commonly known as: 5055 West River Drive Stock Show Parcel #18, Denver, Colorado 80216 (the “Property”).

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all of the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in, and to the above-bargained Property, together with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the Property above bargained and described with the appurtenances, unto the Grantee, and its successors and assigns forever. The Grantor, for itself and its successors and assigns does covenant and agree that it shall and will WARRANT AND FOREVER DEFEND the above-bargained Property in the quiet and peaceable possession of the Grantee, and its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

No separate bill of sale with respect to improvements on the Property will be executed.

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

*[Remainder of page intentionally left blank; signature page to follow]*



**EXHIBIT A**  
**(Legal Description)**

A PARCEL OF LAND SITUATE, LYING AND BEING IN THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF A 50 FOOT WIDE EASEMENT TO THE CITY AND COUNTY OF DENVER FOR A RIVER BANK AND SANITARY SEWER LINES, SAID POINT LIES FROM THE CENTER OF SECTION 14, TOWNSHIP 3 SOUTH, RANGE 68 WEST, SOUTH 43°47'42" WEST A DISTANCE OF 1693.66 FEET, AND SOUTH 42°57'53" EAST A DISTANCE OF 50 FEET;  
THENCE NORTH 47°02'07" EAST ALONG SAID EASTERLY LINE OF 50 FEET WIDE EASEMENT A DISTANCE OF 558.17 FEET TO A POINT;  
THENCE SOUTH 42°57'53" EAST A DISTANCE OF 258.01 FEET TO A POINT;  
THENCE SOUTH 69°56' WEST A DISTANCE OF 605.91 FEET TO A POINT;  
THENCE NORTH 42°57'53" WEST A DISTANCE OF 22.27 FEET TO THE POINT OF BEGINNING.



**Exhibit C to the Settlement Agreement**  
**Quitclaim Deed for all DRIR Owned Land on Campus**



**THOMAS Z. MARS**

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

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

Its: \_\_\_\_\_

STATE OF COLORADO )

) ss.

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 201\_ by Thomas Z. Mars.

Witness my hand and official seal.

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

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

**EXHIBIT A**  
**(Legal Description)**

**NATIONAL WESTERN CENTER CAMPUS**

A PART OF THE SOUTH HALF OF SECTION 14, A PART OF THE NORTH HALF OF SECTION 23, AND A PART OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST, OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF SAID SOUTH HALF OF SECTION 14 AND THE EAST LINE OF FRANKLIN ST.;  
THENCE SOUTHERLY, ALONG SAID EAST LINE OF FRANKLIN ST. TO THE NORTHEASTERLY LINE OF RACE CT.;  
THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF RACE CT. AND THE EXTENSION OF THE NORTHEASTERLY LINE OF SAID RACE CT. TO THE SOUTHEASTERLY LINE OF BRIGHTON BLVD.;  
THENCE SOUTHERLY ALONG THE SOUTHEASTERLY AND EASTERLY LINE OF SAID BRIGHTON BLVD. TO THE SOUTHEASTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF 44<sup>TH</sup> ST.;  
THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID 44<sup>TH</sup> ST. AND THE EXTENSION OF THE SOUTHWESTERLY LINE OF SAID 44<sup>TH</sup> ST. TO THE SOUTHERLY LINE OF 46<sup>TH</sup> AVE.;  
THENCE WESTERLY ALONG SAID SOUTHERLY LINE OF 46<sup>TH</sup> AVE. TO THE NORTHWESTERLY LINE OF THE CHICAGO BURLINGTON AND QUINCY RAILROAD MAINLINE;  
THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF THE CHICAGO BURLINGTON AND QUINCY RAILROAD MAINLINE TO THE WESTERLY LINE OF THE OFFICIAL CHANNEL OF THE SOUTH PLATTE RIVER;  
THENCE NORTHERLY ALONG SAID WESTERLY LINE OF THE OFFICIAL CHANNEL OF THE SOUTH PLATTE RIVER TO THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 14;  
THENCE EASTERLY TO THE POINT OF BEGINNING.

TOGETHER WITH:

THAT PARCEL OF LAND DESCRIBED IN WARRANTY DEED RECORDED OCTOBER 1, 2014 AT RECEPTION NO. 2014119366 IN THE OFFICE OF THE CLERK AND RECORDER, CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED THEREIN AS FOLLOWS:  
LOTS 12 THROUGH 18, INCLUSIVE, BLOCK 43, KEENER'S SUBDIVISION, TOGETHER WITH THE WEST HALF OF THE VACATED ALLEY ADJOINING SAID LOTS, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

TOGETHER WITH:

THOSE PARCELS OF LAND DESCRIBED IN SPECIAL WARRANTY DEED RECORDED MARCH 11, 2015 AT RECEPTION NO. 2015030423 IN THE OFFICE OF THE CLERK AND RECORDER,

CITY AND COUNTY OF DENVER, STATE OF COLORADO, DESCRIBED THEREIN AS FOLLOWS:

PARCEL A:

A PARCEL OF LAND LOCATED IN LOTS 19 TO 25, INCLUSIVE, BLOCK 43, KEENER'S SUBDIVISION AND THE EAST 1/2 OF VACATED ALLEY LYING WEST OF AND ADJACENT TO SAID LOTS, AND ALSO LOTS 12 TO 25, INCLUSIVE, BLOCK 42, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING ADJACENT TO AND BETWEEN SAID LOTS, AND THE VACATED WILLIAMS ST. LYING ADJACENT TO AND BETWEEN SAID BLOCK 42 AND 43 KEENER'S SUBDIVISION IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID BLOCK 43 WHICH IS 120.0 FEET EAST OF THE SOUTHWEST CORNER OF SAID BLOCK 43; THENCE NORTH, PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 190.0 FEET; THENCE EAST, PARALLEL WITH THE NORTH LINE OF 48TH AVENUE, A DISTANCE OF 420.0 FEET TO THE NORTHEAST CORNER OF LOT 25, BLOCK 42, KEENER'S SUBDIVISION; THENCE SOUTH PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 190.0 FEET TO THE SOUTHEAST CORNER OF LOT 19, BLOCK 42, KEENER'S SUBDIVISION, WHICH POINT IS ON THE NORTH LINE OF 48TH AVENUE; THENCE WEST ALONG THE NORTH LINE OF 48TH AVENUE, A DISTANCE OF 420.0 FEET TO THE POINT OF BEGINNING.

PARCEL B:

A PARCEL OF LAND LOCATED IN LOTS 9, 10, 11, AND 26, 27, 28, BLOCK 43, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS, AND ALSO LOTS 9, 10, 11 AND 26, 27, 28, BLOCK 42, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS, AND VACATED WILLIAMS STREET, LYING BETWEEN AND ADJACENT TO SAID BLOCKS 42 AND 43, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), WHICH IS 190.0 FEET NORTH OF THE SOUTHWEST CORNER OF BLOCK 43, KEENER'S SUBDIVISION; THENCE NORTH ALONG THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 63.8 FEET; THENCE NORTH 89°55' EAST, A DISTANCE OF 540.0 FEET; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 62.63 FEET TO A POINT 190.0 FEET NORTH OF THE SOUTH LINE OF SAID BLOCK 42, WHICH POINT IS THE SOUTHEAST CORNER OF LOT 26, BLOCK 42, KEENER'S SUBDIVISION; THENCE WEST, PARALLEL WITH THE SOUTH LINE OF SAID BLOCKS 42 AND 43, KEENER'S SUBDIVISION, A DISTANCE OF 540.0 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER (SE 1/4) SOUTHEAST QUARTER (SE 1/4) SECTION 14, TOWNSHIP 3 SOUTH, RANGE 68 WEST AND IN LOTS 1-9, INCLUSIVE, AND LOTS 28-36, INCLUSIVE, BLOCK 43, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS; AND ALSO LOTS 1-9, INCLUSIVE, AND LOTS 28-36, INCLUSIVE, BLOCK 42, KEENER'S SUBDIVISION AND THE VACATED ALLEY LYING BETWEEN AND ADJACENT TO SAID LOTS; AND VACATED

WILLIAMS STREET, LYING BETWEEN SAID BLOCKS 42 AND 43 AND VACATED EAST 49TH AVENUE, LYING BETWEEN THE WEST LINE OF SAID BLOCK 43 AND THE EAST LINE OF SAID BLOCK 42 IN THE CITY AND COUNTY OF DENVER. STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:

BEGINNING AT A POINT ON THE EAST LINE OF GILPIN STREET (BRIGHTON BLVD.), WHICH IS 253.8 FEET NORTH OF THE SOUTHWEST CORNER OF SAID BLOCK 43; THENCE NORTH, ALONG THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 323.0 FEET TO A POINT 161.3 FEET SOUTH OF THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF BRIGHTON BLVD. AND THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.); THENCE NORTH 89°55' EAST, A DISTANCE OF 540.0 FEET; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF GILPIN ST. (BRIGHTON BLVD.), A DISTANCE OF 323.0 FEET; THENCE SOUTH 89°55' WEST, A DISTANCE OF 540.0 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN THE CITY AND COUNTY OF DENVER.

EXCEPT THAT PORTION CONVEYED TO THE CITY AND COUNTY OF DENVER BY SPECIAL WARRANTY DEED RECORDED MAY 8, 1995 AT RECEPTION NO. 9500051856.

ALSO EXCEPTING THEREFROM THAT PARCEL OF LAND DESCRIBED IN BOOK 4709, AT PAGE 424 OF THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, CLERK AND RECORDERS OFFICE.

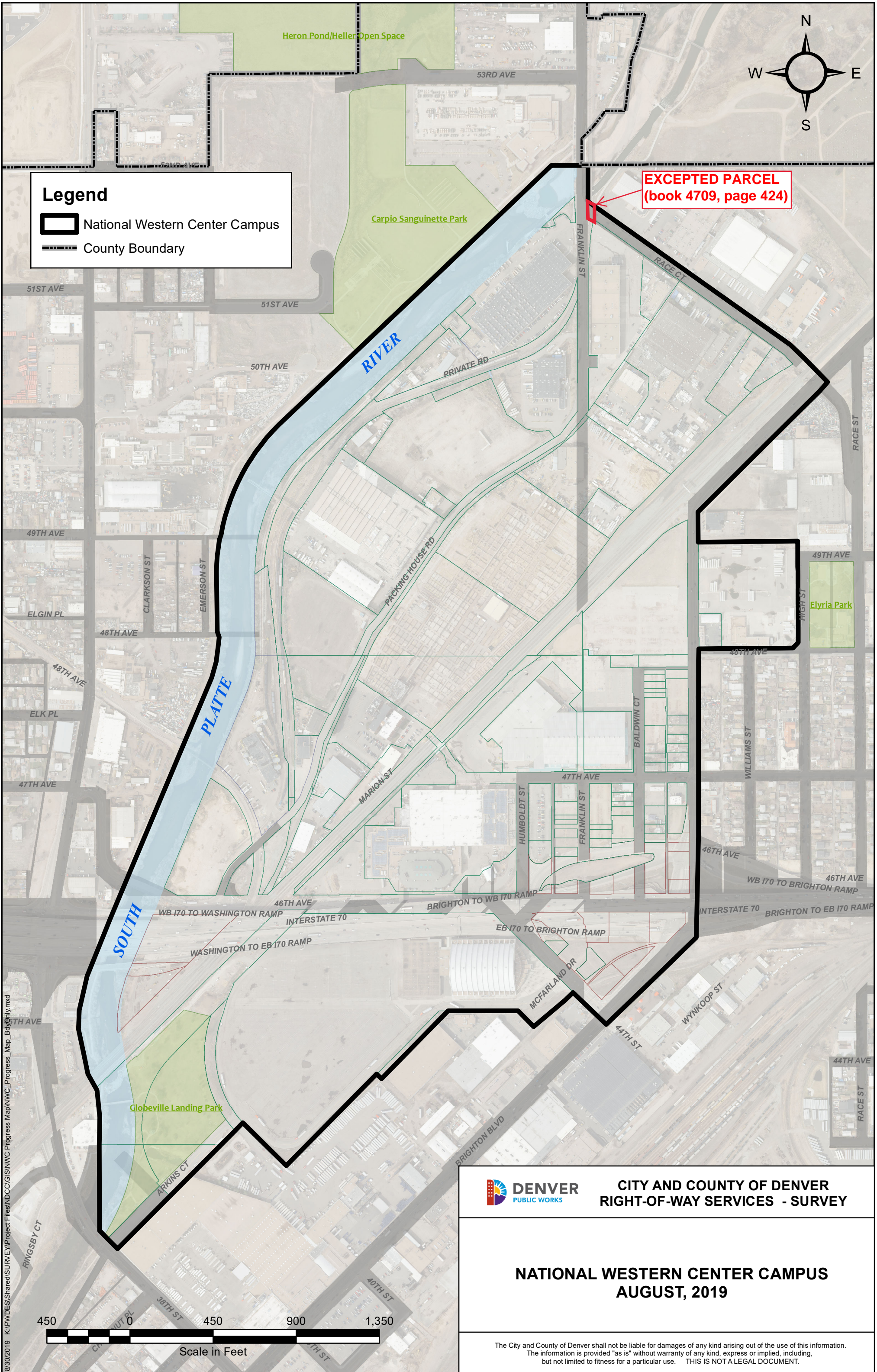




### Legend

- National Western Center Campus
- County Boundary

**EXCEPTED PARCEL**  
(book 4709, page 424)



**CITY AND COUNTY OF DENVER**  
**RIGHT-OF-WAY SERVICES - SURVEY**

## NATIONAL WESTERN CENTER CAMPUS AUGUST, 2019

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**Exhibit D to the Settlement Agreement  
Rail Operating Easement and Use Agreement**



After recording, return to:  
Division of Real Estate  
City and County of Denver  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202

**RAIL OPERATING EASEMENT**  
**AND USE AGREEMENT**  
**(DRIR Corridor at National Western Center)**

**THIS RAIL OPERATING EASEMENT (“Easement”)** is granted as of the Effective Date, by the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city of the State of Colorado, with an address of 1437 Bannock, Denver, Colorado 80202 (“**Grantor**” or “**City**”) to **THE DENVER ROCK ISLAND RAILROAD**, a Colorado corporation with an address of 3400 E. 56<sup>th</sup> Avenue, Commerce City, Colorado 80022 (“**Grantee**” or “**DRIR**”).

1. **GRANT OF EASEMENT.** For and in consideration of **TEN DOLLARS AND ZERO CENTS (\$10.00)** and other good and valuable consideration enumerated in the Settlement Agreement of even date herewith, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys and warrants unto Grantee, its contractors, subcontractors, and its successors and assigns, a perpetual, non-exclusive easement on and through that real property, from 3’-0” feet below the bottom of railroad ties to 23’-6” feet above the top of rail, which is legally described and depicted in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Easement Area**”), which real property is located in the City and County of Denver, State of Colorado, for so long as such easement is used for rail purposes, for a right of way for the operation, maintenance, repair, renewal, and reconstruction of rail, ties, ballast, sub-ballast, drainage infrastructure located within the Easement Area, corridor security fencing and related items that are identified as DRIR’s responsibility in the Rail Construction, Operations and Maintenance Agreement of even date herewith (the “**Trackage**”). This grant of easement is subject to the terms and conditions contained within this Easement, as well as the terms and conditions of the Settlement Agreement, until terminated, and the Rail Construction, Operations and Maintenance Agreement, attached as **Exhibits B** and **C** hereto and incorporated herein by this reference, as such agreements may be amended from time to time. The Trackage includes the rail

and related items described in the bill of sale between Grantor and Grantee of even date herewith, the form of which is attached as **Exhibit D** hereto.

2. **RESERVATION OF RIGHTS**. Grantor reserves the right of ownership, use and occupancy of the Easement Area insofar as said ownership, use and occupancy does not impair the rights granted to Grantee hereunder. Grantee's rights hereunder shall be nonexclusive, but Grantor shall not grant other easements or rights to use the Easement Area except for rail use by other common carriers with federally-granted rights to this corridor. Grantor reserves the right to cross over and through the Easement Area only at the crossing designated in **Exhibit A**, specifically the at-grade crossing at the maintenance and operations buildings, subject to the requirements of Section 3. Subject to the terms and conditions set forth in the following sentence, Grantor reserves the right to place, maintain, remove, replace, install, and rehabilitate drainage facilities, signal equipment, walls, bridges, drainage and property within the Easement Area for which Grantor has responsibility pursuant to the Rail Construction, Operations and Maintenance Agreement. Should Grantor's activities within, above or below the Easement Area require any activities which will or may obstruct, endanger, interfere with or hinder or delay Grantee's operations, including but not limited to the placement of additional utilities, or cutting of the Trackage, such activities may be performed by Grantor or Grantor's contractor after presentation in writing to and approval by Grantee of a construction plan and schedule, the purpose of which is to determine that the proposed construction meets the applicable design and construction standards, such approval not to be unreasonably withheld. Grantor shall not materially interfere with Grantee's common carrier freight rail operations. Grantor shall perform, at no cost to Grantee, all track cutting and restoration work required to accommodate any utility installations or alterations affecting the Easement Area, and such track restoration shall, at a minimum, return the track to the condition it was in prior to cutting. Grantor and Grantee acknowledge that any impairment of the other's rights under this provision regarding the use and entry upon the Easement Area by Grantor as allowed herein cannot be adequately compensated by monetary damages and that injunctive relief may be appropriate. Grantor and Grantee are obligated to maintain and operate the Easement Area and Trackage in accordance with the Rail Construction, Operations and Maintenance Agreement attached as **Exhibit C**.

3. **MAINTENANCE AND OPERATIONS BUILDING AT-GRADE PRIVATE ROAD CROSSING.** The crossing identified on Exhibit A as the Maintenance and Operations building crossing (the “**Crossing**”) is essential for the operations of the National Western Center during certain high-volume or livestock events. Under this Easement DRIR has primary control over the use of the Crossing and may lock gates in the fencing at the Crossing and place additional devices to impede or prohibit the use of the Crossing, except as set forth herein.

a. Stock Show.

- i. During the month of January, rail operations will be conducted on the lines only during the hours between 10:00 a.m. and 5:00 p.m., and between 10:00 p.m. and 4:00 a.m., unless otherwise ordered by an applicable governmental entity. The excluded hours (4:00 a.m. to 10:00 a.m. and 5 p.m. to 10:00 p.m.) are those that typically involve significant activity, including moving animals, people, and equipment, in the area of the Crossing.
- ii. For a period of approximately 16 days in January of each year, to be identified in writing by the City or the Western Stock Show Association no later than December 1 of the previous year, no rail operations will be conducted on weekends or holidays during the identified 16 days unless otherwise ordered by an applicable governmental entity, and no construction shall take place in the Easement Area unless necessitated by an emergency. During this 16 day period, DRIR shall make best efforts to avoid deliveries of flammable liquids of category 2 or greater hazard pursuant to 29 C.F.R. 1910.106, as such regulation may be amended or replaced, will be made using the Easement Area. This is the period in which the National Western Stock Show and Rodeo is held annually, and especially large numbers of visitors, exhibitors, and animals are in the area.

b. Other. The National Western Center Authority (the “**NWCA**”) operates the National Western Center pursuant to a lease with the City. Annually, no later than December 1 for the following calendar year, and beginning on December 1, 2019, for events in 2020, the NWCA, at the City’s direction, will provide to DRIR dates of specific events, in addition to the schedule windows specified in Paragraph 3.a above, not to exceed a total of 10 weekdays and 10

weekends as specified per calendar year, or as otherwise agreed to by DRIR in writing, that will require that the Crossing be opened for the use of the NWCA. DRIR shall allow NWCA to use the Crossing during such events for a period of time not to exceed 11 hours in any 24 hour period, unless a longer period is specifically approved by DRIR.

#### 4. **DEFENSE AND INDEMNIFICATION**

a. To the fullest extent permitted by law, Grantee agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to Grantee's activities or presence in the Easement Area under this Easement that are attributable to the negligence or fault of DRIR or DRIR's customers, agents, representatives, contractors, or suppliers ("**Claims**"). This indemnity shall be interpreted in the broadest possible manner consistent with applicable law to indemnify the City.

b. Grantee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Grantee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Grantee shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

d. Insurance coverage requirements specified in this Easement in no way lessen or limit the liability of the Grantee under the terms of this indemnification obligation. The Grantee is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Easement.

5. **DAMAGE TO PROPERTY.** By virtue of entering into this Easement, Grantor assumes no liability of use, operation or existence of the Easement Area and Grantee's use of the Easement Area and assumes no additional responsibilities or obligations related to the Easement Area, except as provided in the Rail Construction, Operation and Maintenance Agreement. DRIR acknowledges that the City is self-insured and immune from lawsuits in tort pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*, as amended. Nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended.

6. **INSURANCE.** DRIR shall maintain at a minimum the insurance requirements contained in the Rail Construction, Operations and Maintenance Agreement.

7. **TERMINATION.** All rights of Grantee under this Easement shall terminate on the effective date of an order of the Surface Transportation Board or successor agency authorizing DRIR or any successor railroad to discontinue service over the rail lines located on the easement granted hereunder. In the event the Surface Transportation Board or any successor agency authorizes the discontinuance of service over some but not all of the rail lines located on the Easement Area granted hereunder, the Easement granted hereunder will terminate with respect to the portion of the property on which such service has been discontinued. In the event of termination of the Easement in whole or part, Grantee shall have 30 days to remove all personal property and fixtures to which it has title from such property over which the Easement has terminated.

8. **NOTICES.** All notices, demands or consents required or permitted under this Easement shall be in writing and delivered as provided in this paragraph (unless the means of delivery is otherwise expressly specified in this Easement). Notices shall be deemed delivered upon receipt, if delivered personally or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the City:

Executive Director of the Mayor's  
Office of the National Western Center  
5125 Race Court  
Denver, CO 80216

With a copy to:

City Attorney  
Denver City and County Building  
1435 Bannock St., Room 353  
Denver, CO 80202

If to DRIR:

General Manager  
Denver Rock Island Railroad  
3400 E. 56<sup>th</sup> Ave.  
Commerce City, CO 80022

With a copy to:

Corporate Secretary  
The Denver Rock Island Railroad  
3400 E. 56<sup>th</sup> Ave.  
Commerce City, CO 80022

The address and designee for any Party set forth above may be changed at any time by written notice in the manner provided herein to all other Parties.

9. **NO THIRD-PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Easement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Easement shall give or allow any such claim or right of action by any other party or third person on such Easement. It is the express intention of the Parties that any person other than the parties hereto receiving services or benefits under this Easement shall be deemed to be an incidental beneficiary only.

10. **ASSIGNMENT AND ENCUMBRANCE OF INTERESTS.** Grantee may not assign, encumber, or otherwise transfer any rights or interests granted by this Easement, in whole or in part, without the written consent of the Grantor (except as the Easement runs with the land and extends to successors of Grantee). Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Easement, and Grantee's assignee must consent to be bound by the covenants of the Grantee set forth in this Easement and the insurance and indemnity provisions hereof, and such other reasonable conditions as Grantor may impose.

11. **NON-WAIVER.** A failure by any Party to take any action with respect to any default or violation by the other party of any of the terms, covenants, or conditions of this Easement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

12. **COMPLETE INTEGRATION; AMENDMENTS.** This Easement is intended as the complete integration of all understandings between the Parties with respect to the matters addressed in this Easement, except as set out in other documents contemplated or necessitated by this Agreement. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment to this Easement executed by the Parties, their successors, or assigns, approved and executed in the same manner as this Easement, and such amendment is recorded in the land records of the County of Denver.

13. **DEFAULT.** In the event the terms of this Easement are violated by either Party, such violation shall immediately be corrected by the offending Party upon receipt of written notice from the other Party or, if the offending Party does not correct the violation within the time designated in such notice, the other Party may elect to correct or eliminate such violation at the offending Party's expense. The offending Party shall promptly reimburse the other Party for all costs and expenses incurred by in enforcing the terms of this Easement; provided, however, that in any court action, each Party shall bear its own fees and costs.

14. **RUNS WITH LAND**. The terms, conditions, and provisions of this Easement are a covenant running with the land and shall extend to, and be binding upon, the successors and assigns of Grantor and Grantee.

15. **EFFECTIVE DATE**. The Effective Date of this Easement shall be the Cutover Date, as such term is defined in the Construction, Operations and Maintenance Agreement.

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**ATTEST:**

CITY AND COUNTY OF DENVER,  
a Colorado Municipal Corporation

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

By: \_\_\_\_\_  
Michael B. Hancock, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_,  
Attorney for the City and County of Denver

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

**REGISTERED AND COUNTERSIGNED:**

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

By: \_\_\_\_\_  
Timothy O'Brien, Auditor

**“CITY” or “GRANTOR”**

**Exhibit A**  
**(Permanent Easement Area Legal Description)**

**Exhibit B**  
**(Settlement Agreement)**

**Exhibit C**  
**(Rail Construction, Operations and Maintenance Agreement)**

**Exhibit D**  
**(Bill of Sale - Trackage)**