



2019 PM 268-PNEE

Insert Project Number: 2020-SSPR-0105

## PERMANENT NON-EXCLUSIVE EASEMENT

Sanitary, Storm Sewers, and Private Pond per attached Land Description

This Permanent Non-Exclusive Easement ("Easement"), made <sup>2020</sup> ~~12<sup>th</sup>~~ day of ~~April~~, ~~2020~~ between BSP West, LLC, A Delaware Limited Liability Company whose address is 2420 17TH ST 300, DENVER, CO 80202-2511 ("Grantor(s)" or "Owner(s)") and the CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 ("City" or "Grantee")

For and in consideration of connection to city wastewater facilities and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Grantor agrees as follows:

1. The Grantor(s) are the owner of the property commonly known and addressed as 748 S CHEROKEE STREET (the "Property"), described in Exhibits A & B attached hereto and incorporated herein, which will be served by the following privately owned sanitary sewer, storm sewer, and private pond (collectively the "Facilities").
2. The Grantor(s) are jointly and severally responsible for the maintenance and service of such Facilities to ensure conformance with all applicable plans and standards approved by the City.
3. The Grantor(s) hereby grant(s) and convey(s) a permanent non-exclusive easement to the City under, in, upon, across and over the land described in Exhibit B attached hereto and incorporated herein ("Easement Area"), for the purpose of maintaining, repairing, and servicing the Facilities if required as set forth herein, together with any and all rights of ingress and egress, necessary or convenient to the City to accomplish such purposes.
4. The Grantor(s) shall pay for and be responsible for all costs to construct, reconstruct, repair and maintain the Property, the Easement Area and all Facilities within the Easement Area to ensure conformance with all applicable plans and standards relating to the Facilities approved by the City. The City shall not be responsible for any construction, repairs, maintenance, cleaning, snow removal or any other services on the Property, within the Easement Area or of the Facilities.

5. If, in the sole opinion of the City's Manager of Public Works, Facilities are not properly maintained, constructed, repaired, or serviced by Grantor(s), the City shall give notice to the Grantor(s) and if maintenance, construction, repairs, servicing, or corrections are not made within the time designated in such notice, the City is authorized, but not required, to make or have made maintenance, construction, repairs, servicing or corrections. If the City performs such maintenance, construction, repair, servicing or correction, the City shall charge and collect the cost thereof from the Grantor(s). However, in cases of emergency, as solely determined by the City's Manager of Public Works, the City may choose to make immediate maintenance, servicing, repairs or corrections and to collect the cost thereof from the Grantor(s) without notice.

6. The Grantor(s) shall in no way consider or hold the City or its personnel liable for trespass in the performance of any of the maintenance, construction, repairing, servicing, correcting or other activities referred to herein. Grantor(s) hereby agree 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 the work performed under this Easement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City. Grantor(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. Grantor(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. Grantor(s) will defend any and all Claims which may be brought or threatened against City and will 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 shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy. This defense and indemnification obligation shall survive the termination of this Easement.

7. If the Grantor(s) form an Owners Association to hold title to and/or administer the use, construction, repair, servicing and maintenance of the Facilities, the declaration or any similar instrument for any such Owners Association shall clearly state that the Owners Association has joint and several financial responsibility for the maintenance and repair of such Facilities, and the indemnity provisions of this Easement.

8. This Easement shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto, their heirs, successors, or assigns.

9. This Permanent Non-Exclusive Easement shall be recorded in the Denver County real property records.

10. Notices required hereunder shall be in writing and shall be personally delivered or mailed by registered and certified United States mail, postage prepaid, return receipt requested to the following address, or at such other addresses that may be specified in writing:

If to City:                      Manager of Public Works  
   201 W. Colfax, Department 608  
   Denver, CO 80202

If to Grantor(s):                BSP WEST LLC  
   2420 17TH ST 300  
   DENVER , CO 80202-2511

11. All obligations of the City pursuant to this Easement, if any, are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Easement and paid into the Treasury of the City.

[Signatures follow on next page.]

IN WITNESS WHEREOF, the Grantor(s) hereto have executed this Permanent Non-Exclusive Easement as of the day and year first above written.

GRANTOR(S):

BSP WEST, LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: BROADWAY STATION PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IT'S SOLE MEMBER

BY: BROADWAY ASSET MANAGEMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IT'S MANAGING MEMBER

BY: THOMAS RINI, PRESIDENT

Person(s) and Title(s)

*Thomas Rini, President*

Printed Name(s)

STATE OF ~~COLORADO~~ OHIO )

) ss

~~CITY AND~~ COUNTY OF DENVER )

*Cuyahoga*

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of April, 2020, by THOMAS RINI as PRESIDENT for BSP WEST, LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: BROADWAY STATION PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IT'S SOLE MEMBER

BY: BROADWAY ASSET MANAGEMENT, LLC, A DELAWARE LIMITED LIABILITY COMPANY, IT'S MANAGING MEMBER, as the Grantor(s).

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

*Nancy J. Zola*

Notary Public  
NANCY J. ZOLA, Notary Public  
State of Ohio, Cuyahoga County

My Commission Expires April 30, 2023

Witness my hand and official seal.

Address