

## APPENDIX 14

### FORM OF DIRECT AGREEMENT

**THIS DIRECT AGREEMENT** dated as of [\_\_\_\_\_] (this “**Direct Agreement**”) among: The City and County of Denver, a municipal corporation of the State of Colorado, through and on behalf of its Department of Aviation (the “**Owner**”); Denver Great Hall LLC, a limited liability company organized under the laws of the State of Colorado (“**Developer**”); and [\_\_\_\_\_] a [\_\_\_\_\_], as collateral agent on behalf of the Lenders (the “**Collateral Agent**”).

#### **WHEREAS**

(A) The Owner and Developer have entered into that certain Development Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Development Agreement**”), pursuant to which Developer has agreed to perform the Work.

(B) *[NTD: Describe financing structure].*

**NOW, THEREFORE**, in consideration of the foregoing and the mutual terms and covenants contained herein, the parties to this Direct Agreement agree as follows:

#### **1. DEFINITIONS AND INTERPRETATION**

Capitalized terms used but not otherwise defined in this Direct Agreement and references used but not construed in this Direct Agreement have the respective meanings and constructions assigned to such terms in the Development Agreement. In addition, the following terms have the meanings specified below:

**Control Agreement** means the Control Agreement, dated as of the date hereof, by and among Developer, the Owner and Custodian, with respect to the Renewal Work Reserve Account and Handback Requirements Reserve Account.

**Cure Period** means the period starting on the date of the receipt of the Owner Notice and ending on the earlier of the Step-in Date or 90 days after the expiration of any cure periods provided to Developer under the Development Agreement; provided, however, if the Collateral Agent is prohibited from curing any non-monetary default or from substituting Developer with the Substituted Entity by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Developer, then the time period specified herein for curing a default shall be extended for the period of such prohibition.

**Custodian** means [\_\_\_\_\_], as custodian under the Control Agreement.

**Default** means an Event of Default as defined in any Funding Agreement or any event or circumstance specified in any Funding Agreement which would (with the expiration of

a grace period, the giving of notice, the lapse of time, the making of any determination under the Financing Documents or any combination of any of the foregoing) be an Event of Default.

**Development Agreement** has the meaning given to it in the Recitals.

**Discharge Date** means the date on which all of the obligations of Developer under the Financing Documents have been irrevocably discharged in full to the satisfaction of the Collateral Agent.

**Event of Default** means an Event of Default as defined in any Funding Agreement.

**Lender Notice** has the meaning given to it in Section 8.1.

**Owner Notice** has the meaning given to it in Section 6.1.

**[Proceeds Account** means [\_\_\_\_].]

**Project** has the meaning given to it in the Recitals.

**Property** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

**Revival Date** has the meaning given to it in Section 15.1.

**Step-in Date** has the meaning given to it in Section 11.

**Step-in Notice** has the meaning given to it in Section 10.1.

**Step-in Party** has the meaning given to it in Section 10.2.

**Step-in Period** means the period from and including the Step-in Date until the earliest of:

- (a) The Substitution Effective Date;
- (b) The Step-out Date;
- (c) The date of termination of the Development Agreement by the Owner in accordance with this Direct Agreement and the Development Agreement;
- (d) The date of the expiration or early termination of the Term under the Development Agreement; and
- (e) Six (6) months after the Step-in Date,

provided, however, that if the Collateral Agent is prohibited from curing any nonmonetary default after the Step-in Date or from substituting Developer with the Substituted Entity by any process, stay or injunction issued by any governmental

authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Developer, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

**Step-out Date** means the date upon which the notice period set forth in any Step-out Notice expires.

**Step-out Notice** has the meaning given to it in Section 12.

**Substitute Accession Agreement** means the agreement to be entered into by a Substituted Entity pursuant to Section 14.1.

**Substituted Entity** means any Person selected by Lenders and approved by the Owner in accordance with Section 13 of the Agreement to perform all or a portion of Developer's obligations and succeed to the applicable Developer's rights under the Contract Documents.

**Substitution Effective Date** has the meaning given to it in Section 14.1.

**Substitution Notice** has the meaning given to it in Section 13.2.

### 1.1. Interpretation

Unless the context otherwise clearly requires:

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (d) The word "will" shall be construed to have the same meaning and effect as the word "shall";
- (e) Any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);
- (f) Any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and

assigns or such Person's successors in such capacity, as the case may be;

- (g) The words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Direct Agreement in its entirety and not to any particular provision hereof;
- (h) All references herein to Sections and Schedules shall be construed to refer to Sections of and Schedules to this Direct Agreement. Any Schedules to this Direct Agreement are an integral part hereof. The provisions of this Direct Agreement shall prevail over the provisions of any Schedules to the extent of any inconsistency;
- (i) The headings used in this Direct Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Direct Agreement; and
- (j) "Winding-up", "liquidation", "dissolution", "insolvency", "adjustment" or "reorganization" of a Person and references to the "liquidator", "assignee", "administrator", "receiver", "custodian", "conservator" "sequestrator" or "trustee" of a Person shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, insolvency representatives or officers under the law of the jurisdiction in which such Person is incorporated, organized or constituted or any jurisdiction in which such Person or, as the case may be, insolvency representative or officer carries on business including the seeking of winding up, liquidation, dissolution, reorganization, administration, arrangement, adjustment or relief of debtors.

## 2. REPRESENTATIONS AND WARRANTIES

2.1. The Owner represents and warrants to the Collateral Agent that:

- (a) **Organization; Power and Authority.** The Owner is a corporation, duly formed and validly existing pursuant to Article XX, Section 1, of the Constitution of the State of Colorado and has the power and authority to transact the business it transacts and proposes to transact, to execute this Direct Agreement and the Development Agreement and to perform the provisions hereof and thereof.
- (b) **Authorizations, Enforceability.** This Direct Agreement and the Development Agreement have been duly authorized by the Owner, and this Direct Agreement and the Development Agreement constitute legal, valid and binding obligations of the Owner, enforceable against the Owner in accordance with their terms, except as such enforceability may be

limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (c) **No Default.** There is no Developer Default or Owner Default, there exists no event or condition that would, with the giving of notice or passage of time or both, constitute such a Developer Default or Owner Default, and no such Developer Default or Owner Default has occurred prior to the date hereof.

2.2. The Collateral Agent represents and warrants to the Owner that:

- (a) **Organization; Power and Authority.** The Collateral Agent is a national banking association, duly formed and validly existing under the laws of the United States and has the power and authority to transact the business it transacts and proposes to transact, to execute this Direct Agreement and to perform the provisions hereof.
- (b) **Authorizations, Enforceability.** This Direct Agreement has been duly authorized by the Collateral Agent, and this Direct Agreement constitutes a legal, valid and binding obligation of the Collateral Agent, enforceable against the Collateral Agent in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). The Collateral Agent is duly authorized by the Lenders to enter into this Direct Agreement on behalf of the Lenders and to validly bind the Lenders to the terms and conditions hereof.

### 3. CONDITIONS AND LIMITATIONS RESPECTING LENDERS' RIGHTS

3.1. No Funding Agreement or related Security Document shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Direct Agreement, unless the Funding Agreement and related Security Document are in compliance with Section 4.

3.2. No Funding Agreement or Security Document relating to any Refinancing shall be valid or effective, and no Lender shall be entitled to the rights, benefits and protections of this Direct Agreement, unless the Refinancing is in compliance with Section 17.3 of the Development Agreement.

3.3. No Funding Agreement or Security Document shall be binding upon the Owner in the enforcement of its rights and remedies as provided herein and by Law, and no Lender shall be entitled to the rights, benefits and protections of this Direct Agreement, unless and until the Owner has received a copy (certified as true and correct by the

Collateral Agent) of the original thereof bearing, if applicable, the date and instrument number or book and page of recordation or filing thereof, including a copy of a specimen bond, note or other obligation (certified as true and correct by the Collateral Agent) secured by such Security Document, together with written notice of the address of the Collateral Agent to which notices may be sent. In the event of an assignment of any such Funding Agreement or Security Document, such assignment shall not be binding upon the Owner unless and until the Owner has received prior written notice and a certified copy thereof, which copy shall, if required to be recorded, bear the date and instrument number or book and page of recordation thereof, together with written notice of the assignee thereof to which notices may be sent. In the event of any change in the identity of the Collateral Agent, such change shall not be binding upon the Owner unless and until the Owner has received a written notice thereof signed by the replaced and substitute Collateral Agent and setting forth the address of the substitute Collateral Agent to which notices may be sent.

3.4. No Lender shall be entitled to the rights, benefits and protections of this Direct Agreement unless the Funding Agreements in favor of the Lender are secured by senior or first priority Security Documents.

#### **4. MANDATORY TERMS OF PROJECT DEBT, FUNDING AGREEMENTS AND SECURITY DOCUMENTS**

Project Debt, Funding Agreements and Security Documents, and any amendments or supplements thereto, shall comply with the following terms and conditions:

4.1. The Security Document may only secure Project Debt the proceeds of which are used exclusively for the purpose of (a) performing the Work, including designing, permitting, building, constructing, improving, equipping, modifying, operating, maintaining, reconstructing, restoring, rehabilitating, renewing or replacing the Project, (b) making Distributions, but only from the proceeds of refinancings permitted under the Development Agreement, (c) Rescue Refinancing, including making protective advances intended to prevent or remedy a default under this Agreement or a Funding Agreement or both, (d) refinancing any Project Debt described in subsections (a), (b), or (c) above, including paying the reasonable costs of closing the Refinancing (including Lender fees, advisor fees and the fees of legal counsel), (e) to fund reserves relating to the Project, (f) paying closing costs, financing costs and fees with respect to Project Debt, (g) paying principal or interest on existing Project Debt, (h) paying reasonable development fees to Developer or a Developer-Related Entity or to a Lead Contractor or its Affiliates for services related to the Project, (i) making payments due under the Contract Documents to the Owner or any other Person, and (j) making payment of Taxes owed by Developer;

4.2. The Security Document may only secure Project Debt and Funding Agreements issued and executed by (a) Developer or a Developer-Related Entity, (b) its permitted successors and assigns, (c) a special purpose entity that owns Developer but no other material assets and has purposes and powers limited to the Project and the Work, or (d) any special purpose subsidiary wholly owned by such entity;

4.3. No Security Document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge or security interest on or against Developer's Interest shall extend to or affect the fee simple interest of the Owner in the Project, the Work Site or the Terminal or improvements thereto or the Owner's rights or interests under the Contract Documents;

4.4. The Owner shall not have any obligation to any Lender pursuant to the Development Agreement, except for the express obligations to Lenders set forth in this Direct Agreement or any other instrument or agreement signed by the Owner in favor of such Lender or Collateral Agent, provided that the Collateral Agent has notified the Owner of the existence of its Security Documents; and

4.5. Each Funding Agreement and Security Document shall require that the Collateral Agent deliver to the Owner, concurrently with delivery to Developer or any other Person, any notice of default or notice of election or enforcement of remedies, including an election to sell or foreclose, notice of sale or foreclosure or other notice required by Law or by the Security Document in connection with the exercise of remedies under the Funding Agreement or Security Document.

## **5. AGREEMENTS, CONSENT TO SECURITY AND SUBORDINATION OF SECURITY**

5.1. The Owner acknowledges notice and receipt of copies of the Initial Financing Documents. Notwithstanding anything in the Development Agreement to the contrary, but subject to Sections 3 and 4 of this Direct Agreement, the Owner:

- (a) Consents to (i) the assignment by Developer to the Collateral Agent of all of Developer's right, title and interest in, and under the Development Agreement and the Contracts to which Developer is a party, and (ii) the granting by each Equity Member to the Collateral Agent of a security interest in such Equity Member's equity interest in Developer, in each case pursuant to the terms and provisions of the applicable Initial Security Documents; and
- (b) Agrees that such assignment and grant of security interests, and the execution by Developer and the Owner of this Direct Agreement and the performance of their respective obligations hereunder, in each case, does not (i) constitute a Developer Default or any other breach by Developer of the Development Agreement, (ii) with the giving of notice or lapse of time, or both, constitute a Developer Default or any other breach by Developer of the Development Agreement, or (iii) require the consent of the Owner except as provided herein.

5.2. Except as expressly contemplated in the Development Agreement, while any Security Document is in effect, no agreement between the Owner and Developer for the modification or amendment of the Development Agreement that in any way could reasonably be expected to have a material adverse effect on the rights or interests of

the Lender(s) shall be binding on the Lender(s) under such Security Document without the Collateral Agent's consent.

5.3. As long as any Project Debt secured by any Security Document shall remain outstanding, the Owner shall promptly provide the Collateral Agent with a copy of any notice it sends to Developer concerning an actual or potential Developer Default, including any Initial Breach Notice or Final Breach Notice.

5.4. Except as set forth in this Direct Agreement, the Owner shall not be precluded from or delayed in exercising any remedies, including termination of the Development Agreement due to the accumulation of Noncompliance Points or Noncompliance Instances during the Step-in Period and the Owner's rights to cure Developer Default at Developer's expense; provided, however, the Owner shall not be entitled to exercise its right of termination due to Noncompliance Points or Noncompliance Instances accumulated prior to such step in.

5.5. Neither the Owner nor any member of the board of Owner, officer, employee, agent or representative of the Owner, shall have any liability whatsoever for payment of the principal sum of any Project Debt, any other obligations issued or incurred by Developer or a Developer-Related Entity in connection with the Development Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under any Financing Document. Except for a violation by the Owner of its express obligations to Lenders under this Direct Agreement, no Lender is entitled to seek any damages or other amounts from the Owner, whether for Project Debt or any other amount. The Owner's review of any Financing Documents or other Project financing documents is not a guarantee or endorsement of the Project Debt, any other obligations issued or incurred by Developer or a Developer-Related Entity in connection with the Development Agreement or the Project, and is not a representation, warranty or other assurance as to the ability of Developer or a Developer-Related Entity to perform its obligations with respect to the Project Debt or any other obligations issued or incurred by Developer or a Developer-Related Entity in connection with the Development Agreement or the Project, or as to the adequacy of the Payments to provide for payment of the Project Debt or any other obligations issued or incurred by Developer in connection with the Development Agreement or the Project. The foregoing does not affect the Owner's liability to Developer under Article 21 of the Development Agreement for Termination Compensation that is measured in whole or in part by outstanding Project Debt.

## 6. CITY NOTICE OF TERMINATION AND EXERCISE OF REMEDIES

6.1. The Owner shall give the Collateral Agent written notice (an "**Owner Notice**"):

- (a) Promptly upon becoming aware of the occurrence of any event giving rise to a Developer Default, the Owner's right to terminate or give notice terminating the Development Agreement pursuant to Section 21.4.1 of the Development Agreement, or exercise any rights under Section 20.2.3, 20.2.4 or 20.2.7.1 of the Development Agreement; or



- (b) Promptly upon becoming aware of the occurrence of any event giving rise to the Owner's right to suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Development Agreement.

6.2. An Owner Notice shall specify:

- (a) The unperformed obligations of Developer under the Development Agreement and grounds for termination of, or suspension of performance or the other rights all as referred to in Sections 21.4.1, 20.2.3, 20.2.4 or 20.2.7.1 under the Development Agreement, in detail sufficient to enable the Collateral Agent to assess the scope and amount of any liability of Developer resulting therefrom;
- (b) Any other unperformed obligations of Developer of which the Owner is aware as of the date of such Owner Notice;
- (c) All amounts due and payable by Developer to the Owner under the Development Agreement on or before the date of such Owner Notice and which remain unpaid at such date and the nature of Developer's obligation to pay such amounts; and
- (d) The amount of Developer's payment obligation to the Owner that the Owner reasonably foresees will arise during the applicable Cure Period.

6.3. The Owner shall update its Owner Notice to reflect unperformed obligations of Developer under the Development Agreement that have been identified or that have arisen and amounts payable by Developer to the Owner that become due, in each case, after the date of the Owner Notice but prior to the proposed Step-in Date.

## **7. PROCEEDS ACCOUNT**

Subject to the provisions of Section 8, Developer irrevocably directs the Owner to remit all amounts due and owing to Developer under the Development Agreement directly to the Proceeds Account.

## **8. LENDER NOTICE**

8.1. The Collateral Agent shall give the Owner written notice (a "**Lender Notice**"), with a copy to Developer, promptly upon becoming aware of the occurrence of any Default or Event of Default (whether or not an Owner Notice has been served relating to the same event). The Lender Notice shall be sent to the Owner via certified or registered mail, return receipt requested.

8.2. The Collateral Agent shall specify in any Lender Notice the circumstances and nature of the Default or Event of Default to which Lender Notice relates.

8.3. Subject to Section 8.5, the Owner shall, following receipt of a Lender Notice of the occurrence of any Event of Default and until further notice from the Collateral Agent pursuant to Section 8.9, make any payments required to be made by the Owner to Developer under the Development Agreement to a Project Account designated by the Collateral Agent.

8.4. Subject to Section 8.5, the Owner shall, following receipt of a Lender Notice of the occurrence of any Event of Default and until further notice from the Collateral Agent pursuant to Section 8.9, make any payment of any termination sum calculated in accordance with Article 21 of the Development Agreement required to be made to Developer under the Development Agreement to a Project Account designated by the Collateral Agent.

8.5. The Owner's obligations under Sections 8.3 and 8.4 are subject to the following:

8.5.1. The Collateral Agent shall provide to the Owner the following information: (a) the individual responsible for administering the account designated by the Collateral Agent, including his or her position; (b) the mailing address of such individual; and (c) the telephone, fax and e-mail address of such individual.

8.5.2. To the extent that any payment is required to be made by the Owner to Developer under the Development Agreement within a 20-day period immediately following the Owner's receipt of any Lender Notice referred to in Section 8.3 or 8.4, such payment shall not be made to the Project Account designated by the Collateral Agent until the expiry of such 20-day period.

8.6. All sums paid as provided in Sections 8.3 and 8.4 shall be deemed paid to Developer under the Development Agreement and shall constitute a complete discharge of the Owner's relevant payment obligations to Developer. The Owner shall have no liability, whatsoever, for any delay in processing any payment request pursuant to Sections 8.3 or 8.4, provided that such delay does not extend 20 days beyond the date of the Owner's certified, return-receipt or registered mail receipt of the Lender Notice.

8.7. The Collateral Agent shall promptly notify the Owner in writing of any decision to accelerate amounts outstanding under the Financing Documents or to exercise any enforcement remedies under the Financing Documents.

8.8. Neither the Collateral Agent nor the Lender shall exercise any right it may have pursuant to the Security Documents to assign, transfer or otherwise dispose of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents to the extent the exercise of such rights would constitute a Refinancing and Developer has failed to comply with the requirements of Section 17.3 of the Development Agreement.

8.9. The Collateral Agent shall promptly notify the Owner in writing, with a copy to Developer, of a full cure of an Event of Default that is the subject of a Lender Notice.

8.10. Following receipt of a Lender Notice of the occurrence of an Event of Default until delivery of a further notice under Section 8.9 with respect to any full cure of such Event of Default, the Collateral Agent shall have the right to deliver to the Owner a Step-in Notice as provided in Section 10.

## **9. NO TERMINATION DURING CURE PERIOD**

9.1. The Owner agrees not to take any of the following actions prior to the expiration of any applicable Cure Period:

- (a) Terminate or give notice terminating the Development Agreement or exercise any rights under Sections 21.4.1, 20.2.3, 20.2.4 or 20.2.7.1 of the Development Agreement;
- (b) Suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Development Agreement; or
- (c) Take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's property;

provided that such agreement of the Owner shall not prevent the Owner from taking actions which are permitted under this Direct Agreement on a Revival Date in respect of any other prior Developer Default or other breach by Developer of the Development Agreement which has occurred and has not been remedied or waived.

9.2. During any Cure Period, without giving a Step-in Notice, the Collateral Agent shall have the right (but shall have no obligation), at its sole option and discretion, to perform or arrange for the performance of any act, duty, or obligation required of Developer under the Development Agreement, or to cure any default of Developer thereunder, which performance by the Collateral Agent shall be accepted by the Owner in lieu of performance by Developer and in satisfaction of Developer's obligations under the Development Agreement. To the extent that any default of Developer under the Development Agreement is cured and/or any payment liabilities or performance obligations of Developer are performed by the Collateral Agent during the Cure Period, such action shall discharge the relevant liabilities or obligations of Developer to the Owner. Subject to the terms of this Direct Agreement, the Collateral Agent's right to cure any default of Developer as provided in this Section 9.2 may be exercised after the

expiration of relevant cure period granted to Developer in Section 20.1.2 of the Development Agreement.

## 10. STEP-IN NOTICE

10.1. Upon the issuance of an Owner Notice or a Lender Notice of the occurrence of any Event of Default, the Collateral Agent may give a written notice (a “**Step-in Notice**”) under this Section 10 to the Owner at any time during the Cure Period in the case of the issuance of an Owner Notice or at any time following the receipt by the Owner of a Lender Notice, provided that the Event of Default to which Lender Notice relates is continuing.

10.2. The Collateral Agent shall nominate, in the Step-in Notice: (a) the Collateral Agent, a Lender or any of their respective Affiliates; or (b) any Person, subject to approval by the Owner in accordance with Section 13, and the person so nominated being referred to as the “**Step-in Party**.”

## 11. RIGHTS AND OBLIGATIONS ON STEP-IN

On and from the date of the receipt of the Step-in Notice and the approval of the Owner to the appointment of the Step-in Party if required by Section 10.2 (“**Step-in Date**”) and during the Step-in Period, the Step-in Party shall be:

- (a) Entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to Developer under the Development Agreement and this Direct Agreement;
- (b) Entitled to exercise and enjoy the rights and powers expressed to be assumed by or granted to a Step-in Party under this Direct Agreement; and
- (c) Liable for the performance of all of Developer's obligations under the Development Agreement and this Direct Agreement arising on or after the Step-in Date.

11.1. Without prejudice to Section 15 (Revival of Remedies), during the Step-in Period, the Owner shall:

- (a) Not terminate or give notice terminating the Development Agreement pursuant to Section 21.4.1 of the Development Agreement or exercise its rights under Section 20.2.3, 20.2.4 or 20.2.7.1 of the Development Agreement, unless the grounds for termination or giving notice of termination pursuant to Section 21.4.1 of the Development Agreement or exercising its rights under Section 20.2.3, 20.2.4 or 20.2.7.1 of the Development Agreement are failure by the Step-in Party to perform Developer's obligations under the Development Agreement;
- (b) Not suspend its performance (including in connection with any insolvency or bankruptcy proceeding in relation to Developer) under the Development

Agreement, unless the grounds for suspension of performance are failure by the Step-in Party to perform Developer's obligations under the Development Agreement;

- (c) Not take or support any action for the liquidation, bankruptcy, administration, receivership, reorganization, dissolution or winding up of Developer or for the composition or readjustment of Developer's debts, or any similar insolvency procedure in relation to Developer, or for the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, administrator or similar official for Developer or for any part of Developer's Property;
- (d) Continue to make payments required to be made to Developer under the Development Agreement to a Project Account designated by the Collateral Agent; and
- (e) Endorse or pay over, as directed by the Collateral Agent, any checks received by the Owner with respect to, or funds drawn by the Owner under, the Performance Bond; provided that the Collateral Agent reimburse the Owner for any Losses incurred by the Owner in attempting to cure the Developer Default as and to the extent: (i) the Owner is entitled to such reimbursement pursuant to the Development Agreement; (ii) the Owner has promptly notified the Collateral Agent of such Losses at or prior to the time of endorsement or payment and (iii) the Collateral Agent's obligation to reimburse the Owner for such Losses do not exceed the proceeds from any such security.

11.2. The Owner shall owe its obligations under the Development Agreement and this Direct Agreement to Developer and the Step-in Party jointly; provided that:

- (a) The receipt of, or performance by the Owner in favor of, either such Step-in Party or Developer shall be a good and effective discharge of the Owner's obligations under this Direct Agreement and the Development Agreement;
- (b) The Collateral Agent shall be entitled at any time by notice in writing to the Owner to direct (such direction being binding on the Collateral Agent, the Owner and Developer) that, at all times during the Step-in Period, the Step-in Party shall be solely entitled to make any decisions, to give any directions, approvals or consents, to receive any payments or otherwise to deal with the Owner under the Development Agreement and this Direct Agreement; and
- (c) Any amount due from Developer to the Owner under the Development Agreement or this Direct Agreement as of the Step-in Date and notified to such Step-in Party prior to the Step-in Date shall be paid to the Owner on the Step-in Date, failing which the Owner shall be entitled to exercise its

rights under the Development Agreement in respect of the amount so due and unpaid.

11.3. Developer shall not be relieved from any of its obligations under the Development Agreement or this Direct Agreement, whether arising before or after the Step-in Date, by reason of the Step-in Party exercising the rights provided herein, except to the extent provided in Section 9.2 and Section 12.

## 12. STEP-OUT

A Step-in Party may, at any time, by giving not less than 30 days' prior written notice ("**Step-out Notice**") to the Owner terminate its obligations to the Owner under this Direct Agreement, in which event such Step-in Party shall be released from all obligations under this Direct Agreement, except for any obligation or liability of the Step-in Party arising during the Step-in Period. The obligations of the Owner to the Step-in Party under this Direct Agreement shall also terminate on the Step-Out Date. Notwithstanding the foregoing, this Direct Agreement shall continue to remain effective according to its terms after the Step-Out Date if the Step-in Party is the Collateral Agent or a Lender.

## 13. SUBSTITUTION ENTITIES AND SUBSTITUTION PROPOSALS

13.1. Any payment to be made or action to be taken by the Collateral Agent as a prerequisite to keeping the Development Agreement in effect shall be deemed properly to have been made or taken by the Collateral Agent if such payment is made or action is taken by a Substituted Entity proposed by the Collateral Agent and reasonably approved by the Owner. The Owner shall have no obligation to recognize any claim to Developer's Interest by any person or entity that has acquired Developer's Interest by, through, or under any Security Document or whose acquisition shall have been derived immediately from any holder thereof, unless such person or entity is a Substituted Entity reasonably approved by the Owner in accordance with this Section 13.

13.2. The Collateral Agent may give a notice ("**Substitution Notice**") under this Section 13 in writing to the Owner at any time:

- (a) During any Cure Period;
- (b) During any Step-in Period; or
- (c) After delivery of a Lender Notice of the occurrence of any Event of Default and prior to delivery by the Collateral Agent to the Owner of a further notice under Section 8.9.

13.3. In any Substitution Notice, the Collateral Agent shall notify the Owner that it intends to designate a Substituted Entity.

13.4. The Collateral Agent shall, as soon as practicable, provide to the Owner the information regarding the proposed Substituted Entity and any third party entering into a

material subcontract with such Substituted Entity as required by this Section 13, including:

- (a) The name and address of the proposed Substituted Entity;
- (b) The names of the proposed Substituted Entity's shareholders or members and the share capital or partnership or membership interests, as the case may be, held by each of them;
- (c) The manner in which it is proposed to finance the proposed Substituted Entity and the extent to which such financing is committed;
- (d) Copies of the proposed Substituted Entity's most recent financial statements (and if available such financial statements shall be for the last three financial years) or in the case of a newly-formed special purpose company its opening balance sheet;
- (e) A copy of the proposed Substituted Entity's formation documents;
- (f) Details of the resources available to the proposed Substituted Entity and the proposed Substituted Entity's appropriate qualifications, experience and technical competence available to the proposed Substituted Entity to enable it to perform the obligations of Developer under the Development Agreement;
- (g) The names of the proposed Substituted Entity's directors and any key personnel who will have responsibility for the day-to-day management of its participation in the Project;
- (h) A rectification plan providing details of the plan to rectify Developer's breaches with respect to the breaches which are capable of being rectified by the Substituted Entity;
- (i) Such other information, evidence and supporting documentation concerning the identity, financial resources, pre-qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors as the Owner may reasonably request; and
- (j) Such evidence of organization, authority, incumbency certificates, certificates regarding debarment or suspension, and other certificates, representations and warranties as the Owner may reasonably request.

13.5. The Owner will approve or disapprove a proposed Substituted Entity within 45 days after it confirms receipt from the Collateral Agent of a request for approval together with the information required under Section 13.4. The Owner will evaluate the financial resources, qualifications, experience and potential conflicts of interest of the proposed Substituted Entity and its contractors using the same standards and criteria that it is then currently applying, or if there is no current application, then the same standards

and criteria it most recently applied, to the evaluation of Persons responding to the Owner's requests for qualifications for concession or similar agreements for comparable projects and facilities.

13.6. The Owner shall have no obligation to approve the proposed Substituted Entity:

- (a) Unless the Collateral Agent demonstrates to the Owner's reasonable satisfaction that: (i) the proposed Substituted Entity and its contractors collectively have the financial resources, qualifications and experience to timely perform Developer's obligations under the Contract Documents and Key Contracts to which Developer is a party; (ii) the proposed Substituted Entity and its contractors, each of their respective direct and indirect beneficial owners, any proposed key personnel, each of their respective officers and directors and each of their respective affiliates have a good and sound background and reputation (including the absence of criminal, civil or regulatory claims or actions against any such Person, and each such Person's adherence to Good Industry Practice, contract terms and applicable standards regarding past or present performance on other Owner projects); and (iii) the proposed Substituted Entity and its contractors are in compliance with the Owner's rules, regulations and adopted written policies regarding pre-qualification and organizational conflicts of interest;
- (b) If there are unremedied breaches under the Development Agreement and there is no rectification plan reasonably acceptable to the Owner with respect to the breaches which are capable of being rectified by the Substituted Entity;
- (c) If any proposed security interests to be granted by the proposed Substituted Entity to the Collateral Agent and/or the Lender in addition to (or substantially different from) the security interests granted to the Collateral Agent and/or the Lender under the Initial Funding Agreements or Initial Security Documents materially and adversely affect the ability of the Substituted Entity to perform Developer's obligations under the Contract Documents or have the effect of increasing any liability of the Owner, whether actual or potential (unless a Rescue Refinancing is concurrently proposed, in which case the Lenders' Liabilities may increase by up to 10%).

13.7. If the Owner fails to give its approval or disapproval within 60 days of the date on which the Owner has confirmed it has received the information specified in Section 13.4 in respect of any proposed Substituted Entity, or any extension thereof by mutual agreement of the Owner and the Collateral Agent, the approval of the Owner shall be deemed to have been given.

13.8. The Collateral Agent may request approval of more than one Substituted Entity. The Collateral Agent may request approval at any time or times. Any approval by the



Owner of a Substituted Entity shall expire (unless otherwise agreed in writing by the Owner) one year after the approval is issued if the Substituted Entity has not succeeded to Developer's Interest within that period of time. The Owner may revoke an approval if at any time prior to succeeding to Developer's Interest the Substituted Entity ceases to be in compliance with the Owner's rules and regulations regarding organizational conflicts of interest. If the Substituted Entity succeeds to Developer's Interest, then the Owner shall not be entitled to terminate due to Noncompliance Points accumulated by Developer prior to its replacement by the Substituted Entity, provided the Noncompliance that resulted in such Noncompliance Points are being cured by the Substituted Entity as quickly as practicable using commercially reasonable efforts. Once all Noncompliance Instances have been cured, the Owner shall cancel any Noncompliance Points accrued prior to succession.

13.9. Notwithstanding the foregoing, any entity that is wholly owned by a Lender or group of Lenders shall be deemed a Substituted Entity, without necessity for the Owner approval, upon delivery to the Owner of documentation proving that the entity is duly formed, validly existing and wholly owned by the Lender, including a certificate signed by a duly authorized officer of each Lender in favor of the Owner certifying, representing and warranting such ownership.

#### **14. SUBSTITUTION**

14.1. If the Owner approves (or is deemed to have approved) a Substitution Notice pursuant to Section 13, the Substituted Entity named therein shall execute a duly completed Substitute Accession Agreement substantially in the form attached to this Direct Agreement as Schedule A and submit it to the Owner (with a copy thereof to the other parties to this Direct Agreement) and such assignment shall become effective on and from the date on which the Owner countersigns the Substitute Accession Agreement (the "**Substitution Effective Date**") or the date that is 10 days after the date the Owner receives the completed Substitute Accession Agreement if the Owner fails to sign the Substitute Accession Agreement.

14.2. As of the Substitution Effective Date:

- (a) Such Substituted Entity shall become a party to the Development Agreement and this Direct Agreement in place of Developer who shall be immediately released from its obligations arising under, and cease to be a party to, the Development Agreement and this Direct Agreement from and after Substitution Effective Date;
- (b) All of Developer's obligations and liabilities under the Development Agreement and under this Direct Agreement arising from and after the Substitution Effective Date shall be immediately and automatically transferred to the Substituted Entity;

- (c) Such Substituted Entity shall exercise and enjoy the rights and perform the obligations of Developer under the Development Agreement and this Direct Agreement; and
- (d) The Owner shall owe its obligations (including any undischarged liability with respect to any loss or damage suffered or incurred by Developer prior to the Substitution Effective Date) under the Development Agreement and this Direct Agreement to such Substituted Entity in place of Developer, subject to the Owner's right to offset any losses or damages suffered or incurred by the Owner as provided under the Development Agreement and this Direct Agreement.

14.3. The Owner shall use its reasonable efforts to facilitate the transfer to the Substituted Entity of Developer's obligations under the Development Agreement and this Direct Agreement.

14.4. The Substituted Entity shall pay to the Owner on the Substitution Effective Date any amount due to the Owner under the Development Agreement and this Direct Agreement, including the Owner's reasonable costs and expenses incurred in connection with (a) Developer's default and termination, (b) the Owner's activities with respect to the Project during any period the Owner was in possession of the Project, and (c) the approval of the Substituted Entity, all as of the Substitution Effective Date and notified to such Substituted Entity prior to the Substitution Effective Date. The Owner's receipt of the payment pursuant to this Section 14.4 shall be a condition precedent to the Substitution Effective Date.

14.5. As of the Substitution Effective Date:

- (a) Any right of termination suspended by virtue of Section 9.1 shall be of no further effect and the Owner shall not be entitled to terminate or suspend performance of the Development Agreement and this Direct Agreement by virtue of any act, omission or circumstance that occurred prior to such Substitution Effective Date; and
- (b) The Owner shall enter into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer shall be replaced as a party by the Substituted Entity.

## **15. REVIVAL OF REMEDIES**

15.1. If an Owner Notice has been given, the grounds for that notice are continuing and have not been remedied or waived and:

- (a) As of the end of the Cure Period, no Step-in Notice has been given and no Substituted Entity becomes a party to the Development Agreement and this Direct Agreement; or

- (b) The Step-in Period ends without a Substituted Entity becoming a party thereto,

Then, from and after the date such Cure Period or such Step-in Period, as the case may be, expires (the “**Revival Date**”), the Owner shall be entitled to:

- (i) Act upon any and all grounds for termination or suspension available to it in relation to the Development Agreement in respect of defaults under the Development Agreement not remedied or waived;
- (ii) Pursue any and all claims and exercise any and all remedies against Developer; and
- (iii) If and to the extent that it is then entitled to do so under the Development Agreement, take or support any action of the type referred to in Section 20.2 of the Development Agreement.

## 16. NEW PROJECT AGREEMENT

16.1. If:

(a) The Development Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving Developer, or

(b) A Developer Default under Sections 20.1.1.12 or 20.1.1.13 of the Development Agreement occurs with respect to any Guarantor of material Developer obligations owed to the Owner under the Contract Documents or any Equity Member with a material financial obligation owing to Developer for Committed Equity Investment, and such Guarantor’s or Equity Members’ obligations relating to Developer or the Project are rejected by a trustee or debtor-in-possession in, or terminated as a result of any bankruptcy or insolvency proceeding involving such Guarantor or Equity Member and, within 90 days after such rejection or termination, the Collateral Agent shall so request and shall certify in writing to the Owner that it intends to perform the obligations of Developer as and to the extent required under the Development Agreement,

The Owner will execute and deliver to the Collateral Agent (or any Substituted Entity satisfying the requirements of this Direct Agreement if directed to do so by the Collateral Agent) a new project agreement. Such new project agreement shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the Development Agreement, except for any obligations that have been fulfilled by Developer, any party acting on behalf of or stepping-in for Developer or the Owner prior to such rejection or termination. References in this Direct Agreement to the "Development Agreement" shall be deemed also to refer to any such new project agreement.

## **17. RECEIVERS**

17.1. The appointment of a receiver at the behest of Developer shall be subject to the Owner's prior written approval in its sole discretion. The appointment of a receiver at the behest of any Lender shall be subject to the following terms and conditions:

- (a) The Owner's prior approval shall not be required for the appointment of the receiver or the selection of the Person to serve as receiver;
- (b) Whenever any Lender commences any proceeding for the appointment of a receiver, the Collateral Agent shall serve on the Owner not less than ten (10) days' prior written notice of the hearing for appointment and of the Lender's pleadings and briefs in the proceeding;
- (c) The Owner may appear in any such proceeding to challenge the selection of the Person to serve as receiver, but waives any other right to oppose the appointment of the receiver; and
- (d) The Owner may at any time seek an order for replacement of the receiver by a different receiver.

17.2. No receiver appointed at the behest of Developer or any Lender shall have any power or authority to replace the Lead Contractor or the Lead O&M Firm except by reason of default or unless the replacement is a Substituted Entity reasonably approved or deemed approved by the Owner.

## **18. ESTOPPEL CERTIFICATES**

18.1. At any time and from time to time, within 30 days after written request of any Lender or proposed Lender, the Owner, without charge, shall certify by written instrument duly executed and acknowledged, to any Lender or proposed Lender as follows:

- (a) As to whether the Development Agreement has been supplemented or amended, and if so, attaching a copy of such supplement or amendment to such certificate;
- (b) As to the validity and force and effect of the Development Agreement against the Owner, in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and the general principles of equity;
- (c) As to the existence of any Developer Default of which it has actual knowledge;
- (d) As to the existence of events which, by the passage of time or notice or both, would constitute a Developer Default, to the Owner's actual knowledge;

- (e) As to the then accumulated amount of Noncompliance Points;
- (f) As to the existence of any Claims by the Owner regarding the Development Agreement; and
- (g) As to the Effective Date and the expiration date of the Term.

18.2. The Owner shall deliver the same certified, written instrument to a Substituted Entity or proposed Substituted Entity within fifteen (15) days after receiving its written request, provided that the request is delivered to the Owner either before the proposed Substituted Entity succeeds to Developer's Interest or within sixty (60) days after the Substituted Entity has succeeded to Developer's Interest.

18.3. Any such certificate may be relied upon by, and only by, the Lender, proposed Lender, Substituted Entity or proposed Substituted Entity to whom the same may be delivered, and the contents of such certificate shall be binding on the Owner.

## **19. GENERAL**

19.1. Neither the Lender nor the Collateral Agent shall have any obligation hereunder to extend credit to the Owner or any contractor to the Owner at any time, for any purpose.

19.2. For so long as any amount under the Financing Documents is outstanding, the Owner shall not, without the prior written consent of the Collateral Agent, consent to any assignment, transfer, pledge or hypothecation of the Development Agreement or any interest therein by Developer, other than as specified in the Development Agreement or this Direct Agreement.

## **20. TERMINATION**

This Direct Agreement shall remain in effect until the earlier to occur of (a) the Discharge Date; (b) the time at which all of the Owner's obligations and liabilities have expired or have been satisfied in accordance with the terms of the Development Agreement and this Direct Agreement; and (c) any assignment to a Substituted Entity has occurred under Section 14 and the Owner shall have entered into an equivalent direct agreement on substantially the same terms as this Direct Agreement, save that Developer has been replaced as a party by the Substituted Entity.

## **21. EFFECT OF BREACH**

Without prejudice to any rights a party may otherwise have, a breach of this Direct Agreement shall not of itself give rise to a right to terminate the Development Agreement.

## **22. NO PARTNERSHIP**

Nothing contained in this Direct Agreement shall be deemed to constitute a partnership between the parties to this Direct Agreement. None of the parties shall hold itself out contrary to the terms of this Section 22.

## **23. REMEDIES CUMULATIVE; NO WAIVER**

No failure or delay by the Owner, the Lenders or the Collateral Agent (or their designee) in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The remedies provided herein are cumulative and not exclusive of any remedies provided by law and may be exercised by the Lenders, the Collateral Agent or any designee, transferee or assignee thereof from time to time. In no event shall any provision of this Direct Agreement or any consent to any departure by any party therefrom be effective unless such waiver is permitted by Section 24, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

## **24. AMENDMENT**

No amendment, modification or waiver of any provision of this Direct Agreement, or consent to any departure herefrom by any party to this Direct Agreement, shall be effective against any party to this Direct Agreement unless the same shall be in writing and signed by the party against whom enforcement is sought, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

## **25. SUCCESSORS AND ASSIGNS**

25.1. No party to this Direct Agreement may assign or transfer any part of its rights or obligations hereunder without the consent of the other parties, save that the Collateral Agent may assign or transfer its rights and obligations hereunder to a successor Collateral Agent in accordance with the Financing Documents. In connection with any such assignment or transfer, the Owner agrees to enter into a new Direct Agreement with the successor Collateral Agent on terms that are substantially the same as those of this Direct Agreement.

25.2. This Direct Agreement shall be binding upon and inure to the benefit of the parties to this Direct Agreement and their respective successors and permitted assigns.

## **26. COUNTERPARTS**

This Direct Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the parties may execute this Direct Agreement by signing any such counterpart. Transmission by facsimile or electronic mail of an executed counterpart of

this Direct Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart. The Parties, in the manner specified by Owner, may sign this Direct Agreement electronically.

## 27. SEVERABILITY

If, at any time, any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 28. NOTICES

28.1. Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Direct Agreement (each, a notice) to a party must be given in writing (including by fax or electronic mail). All notices will be validly given if on a Business Day to each party at the following address:

To the Owner: City and County of Denver, Department of  
Aviation  
8500 Peña Boulevard, Suite 9810  
Denver, Colorado 80249-6340  
Attention: Gisela Shanahan, Chief Financial  
Officer  
E-Mail: Gisela.Shanahan@flydenver.com

To Developer: Denver Great Hall LLC  
[Address]Attention: [\_\_\_\_]  
E-Mail: [\_\_\_\_]

To the Collateral Agent: [\_\_\_\_]  
[Address]Attention: [\_\_\_\_]  
Email: [\_\_\_\_]

28.2. A notice shall be deemed to have been given:

- (a) Upon receipt, if delivered in person;
- (b) Upon receipt (confirmed by automatic answer back or equivalent evidence of receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;
- (c) One Business Day after delivery to the courier properly addressed, if delivered by overnight courier; or

- (d) Four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States certified or registered mail.

28.3. Each of the parties will notify each other in writing of any change of address, such notification to become effective 15 days after notification.

## **29. GOVERNING LAW AND JURISDICTION**

29.1. This Direct Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado. The venue for any litigation arising from a Dispute shall be in the City and County of Denver, Colorado.

29.2. Each of Developer, the Owner and the Collateral Agent irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier. Nothing in this Direct Agreement will affect the right of any party to serve process in any other manner permitted by law.

29.3. Each of the Owner, Developer and the Collateral Agent (a) certifies that no representative, agent or attorney of another party has represented, expressly or otherwise, that such party would not, in the event of a proceeding, seek to enforce the mutual waivers in this Section 29 and (b) acknowledges that it has been induced to sign, or change its position in reliance upon the benefits of, this Direct Agreement by, among other things, the mutual waivers and certifications in this Section 29.

## **30. CONFLICT WITH PROJECT AGREEMENT**

In the event of any conflict or inconsistency between the provisions of this Direct Agreement and the Development Agreement, the provisions of this Direct Agreement shall prevail.

**IN WITNESS WHEREOF**, each of the parties to this Direct Agreement has caused this Direct Agreement to be duly executed by its duly authorized officer as of the date first written above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



**CITY AND COUNTY OF DENVER**

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

**[ \_\_\_\_\_ ], as Collateral Agent**

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

**DENVER GREAT HALL LLC**

By: \_\_\_\_\_  
Name:  
Title: Authorized Representative

By: \_\_\_\_\_  
Name:  
Title: Authorized Representative

**SCHEDULE A**  
**Form of Substitute Accession Agreement**

[Date]

To: City and County of Denver  
For the attention of: [\_\_\_\_\_]  
[Lenders and other parties to Financing Documents to be listed]  
[insert address]  
For the attention of: [•]

From: [Substituted Entity]

**DENVER GREAT HALL PROJECT:  
SUBSTITUTE ACCESSION AGREEMENT**

Ladies and Gentlemen:

Reference is made to the Development Agreement, dated as of [\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the **Development Agreement**) between the City and County of Denver, through and on behalf of its Department of Aviation (the Owner) and Denver Great Hall LLC (Developer) and the Direct Agreement, dated as of [\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time, the **Direct Agreement**) among the Owner, Developer and [\_\_\_\_\_] , as Collateral Agent. Terms defined in the Direct Agreement and not otherwise defined herein are used herein as defined in the Direct Agreement.

1. We confirm that we are a Substituted Entity pursuant to Section 14 of the Direct Agreement.
2. We acknowledge and agree that, upon and by reason of our execution of this Substitute Accession Agreement, we will become a party to the Development Agreement and the Direct Agreement as a Substituted Entity and, accordingly, shall have the rights, powers and obligations of Developer under the Development Agreement and the Direct Agreement.
3. Our address, telephone number and address for electronic mail for the purpose of receiving notices are as follows:

[contact details of Substituted Entity]

4. This Substitute Accession Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado.

The terms set forth herein are agreed to:

[Substituted Entity]

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

Agreed for and on behalf of:

CITY AND COUNTY OF DENVER

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