

## **DEVELOPMENT AND VESTING AGREEMENT (Lowry Vista)**

**THIS DEVELOPMENT AND VESTING AGREEMENT** (this "Agreement") is made and entered into as of the Effective Date (as defined in Paragraph 10.aa. below), by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation and home rule city (the "City"), and **IRG REDEVELOPMENT I, LLC**, a Colorado limited liability company ("IRG"), with respect to the following facts:

A. IRG is the owner of a portion of the real property (the "IRG Property") described and included in that certain general development plan entitled Lowry Vista General Development Plan, (the "Site"), such General Development Plan approved by the City's Planning Board on December 2, 2009 and was recorded on January 13, 2010, at Reception No. 2010004765, in the office of the Clerk and Recorder of the City (the "GDP"). The GDP contemplates that the City and IRG will enter into a development agreement to address the vesting of certain development rights for the Site. The Site is a portion of the former Lowry Air Force Base.

B. The western portion of the Site (the "West Parcel") is zoned R-2-A with waivers by Ordinance No. 604 Series of 1997, and is approximately 10.75 acres. The eastern portion of the Site (the "East Parcel") is zoned C-MU-20 with waivers by Ordinance No. 56, Series of 2009, and is approximately 61.09 acres. The GDP and the zoning for the East Parcel and West Parcel are designed to promote mixed use development, aggregated open space and other tools to draw people and activities close to the Site. The GDP envisions an integrated network of lively public space with a mix of commercial and residential uses. The East Parcel and the West Parcel are depicted on **Exhibit A** attached hereto and incorporated herein by this reference.

C. Development of the Site (the "Project") will require substantial investments in infrastructure improvements and public facilities, including, without limitation, streets, drainage facilities, sanitary sewer facilities, water lines, parks and recreation facilities that will serve the needs both of the Site and the surrounding neighborhoods of the City. Completion of these improvements and facilities will require substantial investments by IRG and other future owners of portions of the Site and the Lowry Vista Metropolitan District (the "District") that has been created for the Site. Such investments can be supported only if there are assurances that the development of the Project will be allowed to proceed to ultimate completion as provided in this Agreement.

D. The legislature of the State of Colorado adopted Sections 24-68-101, et seq. of the Colorado Revised Statutes (the "Vesting Statute") to provide for the establishment of vested property rights for certain site specific development plans in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning. The City's home rule powers under Article XX of the Colorado Constitution, the City's charter (the "Charter") and the Vesting Statute authorize the City to enter into agreements with landowners providing for vesting of certain development rights.

E. The City has determined that development of the Site in accordance with this Agreement will provide for orderly growth in accordance with the policies and goals set forth in the City's Comprehensive Plan 2000 (the "Comprehensive Plan") and Blueprint Denver..

F. In exchange for the benefits to the City contemplated by this Agreement, IRG desires to receive the assurance that it may proceed with development of the Site pursuant to the terms and conditions contained in this Agreement. The City has determined that, in light of the benefits to the City from this Project, the size and phasing of the Project and the unpredictability of economic cycles and market conditions over the life of the development of the Site, it is appropriate to vest certain development rights for the Project, IRG, and its successors and assigns through this Agreement.

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

1. **Fire Station Parcel.** IRG owns real property located on the west side of the Site, which is legally described and generally depicted in **Exhibit B** attached hereto and incorporated herein by this reference, (the "Fire Station Parcel"). The City plans to construct a fire station on the Fire Station Parcel.

a. Conveyance to City.

(i) Closing.

A. In consideration of, and in exchange for, the covenants and agreements of the City contained herein and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, provided that the City elects to proceed to Closing as provided herein, IRG shall convey the Fire Station Parcel and any stockpiled dirt thereon to the City, at no cost to the City, upon the later of (i) sixty (60) days after complete execution of this Agreement by the City or (ii) ten (10) days following the release of the Deed of Trust (as defined in Paragraph 1.a.(ii) below). The Fire Station Parcel will be conveyed by Special Warranty Deed containing deed restrictions acceptable to the City and subject to only those exceptions acceptable to the City ("Deed"), which Deed shall be in substantially the form set forth in **Exhibit C**, attached hereto and incorporated herein. IRG may choose an earlier date to convey the Fire Station Parcel to the City by giving the City at least 30 days prior written notice, provided that the City elects to proceed to Closing. The date for conveyance is hereinafter called the "Closing Date".

B. Closing hereunder is conditioned upon the following conditions precedent ("Closing Prerequisites") being satisfied to the reasonable satisfaction of the City's Director of the Division of Real Estate ("Director"):

- a. City elects to close pursuant to this Paragraph 1.
- b. Execution of a release of the Deed of Trust (as defined in Paragraph 1.a.(ii) below)
- c. Execution of the Deed by IRG subject to those exceptions accepted, deemed to be accepted, or waived by the Director in accordance with Paragraph 1.a.(xi) below.
- d. Execution of the Permanent Easement by IRG (as defined in Paragraph 1.c.(iv) below).

C. If the Closing does not occur by September 1, 2012 because the City has elected not to close, the City's rights under this Paragraph 1 shall terminate and thereafter be of no further force and effect but the remainder of this Agreement, including the vesting, shall remain in full force and effect. If the Closing does not occur by September 1, 2012 solely due to the inability of IRG to obtain a partial release releasing the Fire Station Parcel from the lien of the Deed of Trust (defined in Paragraph 1.a.(ii) below) after good faith efforts by IRG to obtain such partial release, this Agreement shall terminate and be of no further force and effect, but the failure to obtain the partial release of the Deed of Trust shall not be a default by IRG under this Agreement. If the Closing does not occur by September 1, 2012 due to IRG's failure to execute the documents detailed in Paragraphs 1.a.(i)B.c. and 1.a.(i)B.d., other closing documents reasonably required by the Title Company (as defined in Paragraph 1(a)(x) below) to close the conveyance, and the Access Permit described in Paragraph 1(a)(viii), this Agreement shall terminate and be of no further force and effect. If the City elects to proceed to Closing, the Parties shall take all actions described herein and be responsible for the costs as provided below.

(ii) Bank of America Deed of Trust. The Fire Station Parcel is encumbered by a deed of trust for the benefit of Bank of America, N.A, (the "Deed of Trust"). Bank of America has agreed that it will release the Fire Station Parcel from the lien of the Deed of Trust upon its receipt of a fully executed copy of this Agreement as evidence that the Fire Station Parcel is being transferred to the City for construction of a fire station that will service the Site and surrounding development. Upon the City's execution of this Agreement, IRG will use best efforts to obtain the release of the Deed of Trust for the Fire Station Parcel by the end of the Inspection Period.

(iii) Items to be Prorated. The following items shall be prorated between the Parties as of the Closing, and paid at Closing:

A. Real Property Taxes. Real property taxes, if any, shall be prorated to the date of Closing and IRG shall pay any such taxes at Closing. The City shall be responsible for all taxes that are incurred from and after Closing, but shall not be responsible for

any taxes that were incurred prior to Closing (whether or not assessed).

B. Special Assessments. IRG shall pay in full all special assessments which accrued prior to the Closing. Any other special assessments (and/or charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to the Fire Station Parcel, shall be prorated between the Parties as of the date of Closing, with IRG paying those allocable to the period prior to the Closing Date and the City being responsible for those allocable subsequent thereto.

C. Utility Prorations. IRG shall pay all utility charges prorated to the Closing Date. The City shall be responsible for all utility charges after Closing.

(iv) Documentary and Recording Fees. IRG shall pay all documentary fees and recording fees required for recordation of the Deed and all other documents.

(v) Title Policy. IRG shall be responsible only for the cost to procure the Title Commitment and Title Policy.

(vi) Closing Fee. The City and IRG shall equally divide the closing fee payable to Title Company at Closing.

(vii) Environmental Documents Disclosure. Within five (5) days of complete execution of this Agreement IRG shall deliver to the City copies of all environmental information relating to the Fire Station Parcel of which it has actual knowledge, including the documents listed in **Exhibit D** attached hereto and incorporated herein by this reference.

(viii) City Inspection. Subject to the terms, conditions and limitations of this Section, for a period of thirty (30) days after the complete execution of this Agreement (the "Inspection Period"), the City or its designees shall have the right to enter upon the Fire Station Parcel and the Permanent Easement Area to inspect the Fire Station Parcel and the Permanent Easement Area, including investigation of the physical condition, geotechnical investigation, and environmental investigation, including performing a Phase I Study, soil sampling, and any other intrusive sampling or monitoring of the land and buildings deemed necessary by the City, at the City's sole option and expense, pursuant to the Revocable and Non-exclusive Access Permit, incorporated herein and attached hereto as **Exhibit F** ("Access Permit"). The Access Permit shall be executed by IRG immediately upon execution of this Agreement by the City.

(ix) Title Matters Not Shown by the Public Records. Not less than five (5) business days after the complete execution of this Agreement, IRG shall deliver to the City true copies of all survey(s) in IRG's possession pertaining to the Fire Station Parcel and shall disclose to the City all leases, easements, liens or other title matters not shown by the public records of which IRG has actual knowledge. During the Inspection Period, the City shall have the right to inspect the Fire Station Parcel to determine if any third party has any right in the Fire Station Parcel not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy).

(x) Title Review. No later than five (5) business days after the complete execution of this Agreement by IRG and the City, IRG shall provide the City with a

title commitment from Land Title Guaranty Company (the "Title Company") for the Fire Station Parcel and copies of exception documents shown thereon.

(xi) Objection Notice, Cure and Election. Written notice signed by the Director of the Division of Real Estate of unmerchantability of title, any matter disclosed by the survey or title commitment for the Fire Station Parcel that is not acceptable to the City, any environmental condition that is not acceptable to the City, any other matter disclosed by the inspection hereunder or any other matter that is not acceptable to the City in its reasonable discretion ("Objection Notice") shall be given to IRG on or before the last day of the Inspection Period. If IRG does not receive the Objection Notice by such date, the City shall be deemed to have accepted the condition of the Fire Station Parcel. If IRG receives notice of any unsatisfactory condition(s), except for activities required to be performed by IRG pursuant to the Oversight Agreement which IRG shall be responsible for completing, IRG may elect, but shall not be obligated, to correct said unsatisfactory condition(s) within the period ending fifteen (15) business days after the expiration of the Inspection Period, or the City can affirmatively waive such unsatisfactory condition(s) (the "Cure Period"). IRG shall be obligated to remove any monetary liens encumbering the Fire Station Parcel which were created by IRG. If IRG does not correct said unsatisfactory condition(s) by the end of the Cure Period, the City may, within three (3) days after the end of the Cure Period, in its sole discretion, elect to (i) proceed to Closing and take title to the Fire Station Parcel subject to the conditions previously objected to by the City; or (ii) terminate its right to acquire the Fire Station Parcel, and, in such event, the Parties shall have no further obligations under this Paragraph 1. If the City elects to proceed to Closing, Closing shall occur as set forth in this Paragraph.

(xii) Representations as to Fire Station Parcel. With respect to the Fire Station Parcel, IRG represents to the City that as of the Effective Date of this Agreement through Closing as follows:

A. Possession. No person or entity other than IRG is entitled to possession of any portion of the Fire Station Parcel.

B. Adverse Proceedings. There is no pending litigation, investigation, arbitration, or other proceedings of any kind affecting the Fire Station Parcel or affecting IRG's ability to convey the Fire Station Parcel pursuant to this Agreement except for the lawsuit between LAC and AIG regarding the privatization and matters disclosed by the documents listed in **Exhibit D.**

C. Unrecorded Interests. There are no unrecorded leases, licenses, easements, agreements or contracts affecting the Fire Station Parcel.

D. Other Agreements. IRG has not entered into any contracts for the sale of any portion of the Fire Station Parcel other than this Agreement nor granted any options or rights of first refusal to any party with respect to the Fire Station Parcel. There are no leases, non-governmental licenses, occupancy agreements, service contracts or other contracts with third parties relating to the Fire Station Parcel, to which IRG is a party or of which IRG has knowledge that will survive the Closing except those disclosed by the documents listed in **Exhibit D.**

E. Liens. There are no liens on the Fire Station Parcel except the deed of trust for the benefit of Bank of America and those disclosed by the documents listed in **Exhibit D**.

These representations shall survive Closing for a period of twelve (12) months.

b. Maintenance of Fire Station Parcel. Upon conveyance of the Fire Station Parcel to the City, IRG shall no longer be responsible for maintenance, operation or repair of the Fire Station Parcel.

c. Design and Construction of Fire Station and Shared Improvements.

(i) Fire Station Improvements. After Closing, the City shall be responsible, at the City's expense, for design and construction of all improvements that are solely related to the Fire Station to be constructed on the Fire Station Parcel ("Fire Station Improvements"). The Fire Station Improvements include water service line, sanitary sewer service line, storm drainage and water quality facilities related solely to Fire Station, dry utilities, and the sidewalk and tree lawn immediately adjacent to the Fire Station Parcel.

(ii) Shared Improvements. The parties agree that, in conjunction with the City's development of the Fire Station Parcel, the City may need to construct certain improvements that will be shared by the Site, if and when it is developed, and the Fire Station Parcel (the "Shared Improvements"). The City will construct the Shared Improvements if the City determines such Shared Improvements are needed for the development of the Fire Station Parcel. The City shall construct the Shared Improvements in compliance with the City's and the Denver Water Board's construction standards in effect at the time the City elects to construct the Shared Improvements. The Shared Improvements are described as follows and are generally depicted in **Exhibit G**, attached hereto and incorporated herein:

A. Xenia Street – If needed, the City shall cause the construction of an approximately forty foot (40') wide roadway, which will include a twenty-four foot (24') asphalt roadway area, two foot (2') curb and gutter, five foot (5') sidewalk and eight foot (8') tree lawn on the west side for the length of Xenia Street immediately adjacent to the Fire Station Parcel, ("Xenia Extended"). The City shall maintain Xenia Extended until IRG is issued its first utility or construction permit using Xenia Extended, at which time IRG shall be responsible for maintenance of Xenia Extended.

B. Alameda Avenue – If needed, the City shall cause the construction of a left turn lane in Alameda Avenue on to Xenia Extended, demolish and reconstruct the median in Alameda, paving, striping and a four way signalized intersection at Alameda and Xenia Extended.

C. Storm Catchment System – If needed, the City shall cause the construction of a storm catchment system to accommodate storm drainage into the existing 60 inch storm water facilities.

(iii) Cost of Shared Improvements. The City shall fund the initial construction of any Shared Improvements actually constructed by the City. IRG shall reimburse

the City for seventy-five percent (75%) of the actual hard construction costs incurred by the City to construct the Shared Improvements up to a maximum of Three Hundred Ninety-Seven Thousand and no/100 U.S. Dollars (\$397,000.00), (the “IRG Share”). IRG shall pay the City the IRG Share no later than the end of the Vesting Period. Commencing on the date that construction of the Shared Improvements are completed, interest shall accrue on the IRG Share at the rate of three percent (3%) per annum until the IRG Share is paid. If IRG determines that it is not economically feasible to develop the Site due to the restrictions or requirements of the Colorado Department of Public Health and Environment, the Army Corps of Engineers, the U.S. Air Force, or other governmental bodies, then IRG shall not be obligated to pay the IRG Share or any interest accrued thereon and, in such event, IRG’s failure to pay the IRG Share shall not be a default of this Agreement. If IRG has assigned the obligations of IRG in this Paragraph to the District as is allowed by this Agreement, the parties agree that any amount paid by or on behalf of the District to the City for Shared Improvements pursuant to this Paragraph shall be an allowed use of District funds under the District’s Service Plan. The City agrees to provide documentation reasonably requested by the District as a basis for payment of the IRG Share.

(iv) Permanent Easement. IRG shall execute at Closing a permanent easement to the City, its contractors, subcontractors and the general public, over, on, under and in Xenia Extended and in an area east of Xenia Extended all as shown on **Exhibit G** (“Permanent Easement Area Depiction”) for access to the Fire Station Parcel and for construction, operation, maintenance, repair and replacement of Fire Station Improvements and Shared Improvements (“Permanent Easement”). Said Permanent Easement shall be in substantially the form of Permanent Easement set forth in **Exhibit H**, attached hereto and incorporated herein. The Permanent Easement shall automatically terminate as to any portion of the Permanent Easement Area dedicated as public right-of-way.

(v) Grading and Fill Dirt. In order to construct the Fire Station Improvements and the Shared Improvements the City needs to grade areas adjacent to the Fire Station Parcel as generally depicted on **Exhibit G** (“Grading Areas”). IRG and the City hereby agree that dirt taken from the Grading Area may be used by the City as fill material for Xenia Extended and the Fire Station Parcel. The City or its contractors shall obtain an Access Permit to perform work in the Grading Area, which Access Permit shall constitute permission to enter into the Grading Area, IRG’s approval of the grading plan and IRG’s approval of the use of such dirt for Xenia Extended and the Fire Station Parcel. The City’s Access Permit shall be the form of Access Permit attached hereto as **Exhibit F**.

## 2. **Open Space And Trails**

a. Open Space Aggregation. The C-MU-20 with waivers zoning of the Site allows aggregation of required open space into one or more larger parcels. The required open space and trails for the Site shall be 16.17 acres of on-site open spaces and trails, so long as the Site density does not increase beyond that set forth in the GDP, (the “Required Open Space and Trails”) and such Required Open Space and Trails shall be distributed across the GDP area, as required by the GDP and as set forth herein. The Required Open Space and Trails shall be designated for aggregation as part of the site plan process, and shall be constructed and maintained by IRG as part of each approved site plan.

b. Location of Required Open Space and Trails. The location and size of the Required Open Space and Trails and connections thereto shall be as generally depicted in sheet 8A, Open Space Concepts, of the GDP set forth in Exhibit E, attached hereto and incorporated herein (“Sheet 8A”). IRG shall coordinate, and obtain approval of, the final location of the Required Open Space and Trails with the Manager of Parks and Recreation during the site plan phases for the Project.

c. Buffer Area and Native Area. At least 13 acres of the Required Open Space and Trails shall be located in the Buffer Area, as shown on Sheet 8A (the “Buffer Area”). The Buffer Area must be useable to the greatest extent possible while still accommodating the parameters of naturalistic design for water quality and must also serve as a buffer between the Project and the native area to the north of the Project as generally depicted on Exhibit E (the “Native Area”).

(i) The plantings and improvements within the Buffer Area shall be designed so that it is more developed to less developed moving south to north. Low growing, native grasses shall be used as lawn for the center of the Buffer Area and more naturalized plantings shall be used closer to the Native Area. Any improvements within the Buffer Area shall comply with the general vision of natural, less developed open space along edge of the Native Area transitioning to slightly more developed open space along the edge of the Project to the south. Lighting levels at 0 foot candles shall be maintained along the edge of the Native Area unless otherwise agreed to in writing by the Manager of Parks and Recreation. Landscape plans, site plans, and all plans for improvements, including but not limited to plantings, walkways, lighting, and fencing, within the Buffer Area shall be reviewed and approved, which approval shall not be unreasonably conditioned, withheld, or delayed by the Manager of Parks and Recreation as part of the City’s standard development review process.

(ii) Trails within the Buffer Area shall be highlighted with minimal light levels and low growing native grasses, transitioning down to more naturalized trails and plantings closer to the Native Area.

(iii) Within the Buffer Area, the design shall include storm drainage and water quality management features that are designed in a manner that is in keeping with the surrounding landscape following a naturalistic approach. Such storm drainage and water quality management features shall be consistent with the Urban Drainage Control District Criteria Manual. Such storm drainage and water quality management features shall be constructed within the Site and shall provide water quality and the opportunity for trash and other pollutants to be removed before discharging storm water into the Native Area. The Parties understand that the development of the Site, including the Buffer Area, is under the jurisdiction of a number of governmental agencies, including the Urban Drainage and Flood Control District, CDPHE, and the U.S. Air Force, and these agencies may require the use of specific types of storm drainage and water quality management features within the Buffer Area for drainage and water quality treatment. Storm drainage and water quality management features shall not be made of concrete unless approved in writing by the Manager of Parks and Recreation, which approval shall not be unreasonably withheld, conditioned or delayed. All storm drainage and water quality management features shall be approved by the Managers of Parks and Recreation and Public Works, which approvals shall not be unreasonably withheld, conditioned or delayed.



(iv) Drainage from the Project flowing into the Buffer Area shall flow to one or more water quality treatment facilities approved by the Managers of Public Works and Parks and Recreation. Such facilities shall be constructed within the Site and shall provide water quality and the opportunity for trash and other pollutants to be removed before discharging storm water into the Native Area unless otherwise approved by the Managers of Parks and Recreation and Public Works, which approvals shall not be unreasonably withheld, conditioned or delayed.

d. Trails. IRG shall design and construct a bike/pedestrian trail along the top of the Westerly Creek Dam connecting the existing trail that is located on a portion of the Westerly Creek Dam to Alameda Avenue, in the location generally depicted on Sheet 8A. Such design and construction shall be completed prior to issuance of a Temporary Certificate of Occupancy for any development on the East Parcel.

e. Maintenance. IRG shall construct, operate and maintain all Required Open Space and Trails within the Site, including the Buffer Area and storm water and water quality facilities within the Buffer Area and shall obtain and remain compliant with all approvals and permits related to such drainage and water quality facilities.

f. Fence. Prior to the issuance of a Temporary Certificate of Occupancy for any development within the East Parcel, IRG shall install and maintain a fence between the Native Area and the Buffer Area, which fence shall be in a design mutually agreed upon by IRG and the City's Manager of Parks and Recreation.

g. Contingencies. Notwithstanding anything in this Paragraph 2, IRG's obligation to develop the Site and the Required Open Space and Trails is contingent upon approval from the U.S. Air Force and Colorado Department of Public Health and Environment ("CDPHE") under the current restrictive covenants associated with the Site. The City understands that modifications to the restrictive covenants must occur prior to any development of the Required Open Space and Trails and IRG's obligation to construct the Required Open Space and Trails is contingent upon the modification of the restrictive covenants by the U.S. Air Force and CDPHE to allow the development of the Required Open Space and Trails. If IRG does not obtain approvals to build on the Site (other than the Fire Station Parcel which is not bound by the restrictive covenants), IRG shall not be obligated to build the Required Open Space and Trails as set forth herein (but must comply with the GDP open space requirements) and this Agreement shall remain in full force and effect. If IRG obtains approvals to build on any portion of the Site (other than the Fire Station Parcel which is not bound by the restrictive covenants), but does not obtain approval to build the Required Open Space and Trails, then IRG must still comply with the GDP open space requirements and this Agreement shall remain in full force and effect.

h. Assignment. IRG may assign some or all of its rights and obligations under this Paragraph 2 to the District as authorized by the District's Service Plan for long term ownership, maintenance, and operations upon written notice to the Managers of Parks and Recreation and Public Works.

### 3. Vesting of Property Rights.

a. Vesting Period. In recognition of the size and nature of the development contemplated under this Agreement and the GDP, the substantial investment and time required to complete the development of the Project, the phased development of the Project, and the possible impact of economic cycles and varying market conditions during the course of development, IRG and the City agree that the term of this Agreement and the vested development rights established under this Agreement shall continue until ten (10) years after the Effective Date of this Agreement (the "Vesting Period"). After the expiration of the Vesting Period, the provisions of this Paragraph 3 shall be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) any common-law vested rights obtained prior to such termination, or (b) any right arising from City permits, approvals or other entitlements for the Site or the Project which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement.

b. Vested Rights. IRG and the City agree (i) that this Agreement constitutes an approved "site specific development plan" and a "development agreement" as defined in the Vesting Statute, and (ii) that IRG and any other owners of the Site shall have vested development rights to undertake and complete development and use of the Site as provided in this Agreement. Upon approval of this Agreement, the matters set forth in this Agreement shall constitute vested rights pursuant to the Vesting Statute. The uses, densities and other entitlements set forth in the (i) C-MU-20 zoning with waivers established by Ordinance No. 56, Series of 2009 and (ii) provisions of former Chapter 59 of the Denver Revised Municipal Code ("Former Chapter 59") applicable to the C-MU-20 zone district are vested development rights for the East Parcel for the Vesting Period (the "East Parcel Vested Rights"). The uses, densities and other entitlements set forth in the (i) R-2-A zoning with waivers established by Ordinance No. 604 Series of 1997 and (ii) provisions of Former Chapter 59 applicable to the R-2-A zone district are vested development rights for the West Parcel for the Vesting Period (the "West Parcel Vested Rights"). The GDP items set forth in Exhibit I, attached hereto and incorporated herein, are vested property rights for the East Parcel and the West Parcel for the Vesting Period (the "GDP Vested Rights"). The East Parcel Vested Rights, the West Parcel Vested Rights, and the GDP Vested Rights, together, are referred to as the "Vested Rights".

c. The Vesting Statute shall apply to the Vested Rights established herein.

d. "Vested," as used in this Agreement shall be as defined in the Vesting Statute.

4. Design Guidelines. Except for City ordinances, rules and regulations of general applicability, including street and streetscape rules and regulations, the only design guidelines applicable to the Project are the Design Guidelines of the Lowry Community and Lowry Vista Addendum to these Design Guidelines dated November 17, 2009 (the "Lowry Vista Design Guidelines"). Nothing herein shall impair or alter the application of the City's parkway ordinances, rules, regulations or standards.

5. No Obligation to Develop. IRG shall have the right to develop the Site, Buffer Area, and Native Area in the order, at the rate and at the time as market conditions dictate, subject to the terms and conditions of this Agreement and other related agreements. IRG shall have no obligation to construct improvements on all or any portion of the Site and shall have no

liability to the City for any failure to construct improvements on all or any part of the Site pursuant to this Agreement.

6. **Compliance with General Regulations.** Except as otherwise provided in this Agreement, this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, street and streetscape regulations, building, fire, plumbing, electrical and mechanical codes, the Denver Revised Municipal Code, and other City rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the date of this Agreement or may be enacted or amended after the date of this Agreement. IRG does not waive its right to oppose the enactment or amendment of any such regulations or to challenge the validity of such regulations through proper legal means.

7. **Further Assurances.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the City.

8. **Police Powers.** Nothing in this Agreement shall impair the City's exercise of its police powers.

9. **Notices.** Any notices, demands or other communications required or permitted to be given hereunder shall be in writing and shall be delivered personally, delivered by overnight courier services, or sent by certified mail, postage prepaid, return receipt requested, addressed to the parties at the addresses set forth below, or at such other address as either party may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given at the time it is personally delivered, the next business day following being placed with any reputable overnight courier service for next business day delivery, or, if mailed, on the third business day after such mailing.

**If to the City:**

Mayor  
1437 Bannock Street, Rm. 350  
Denver, Colorado 80202

**With copies to:**

Denver City Attorney  
1437 Bannock Street, Rm. 353  
Denver, Colorado 80202

Director of the Division of Real Estate  
201 W. Colfax, Dept. 1010  
Denver, Colorado 80202

Manager of Public Works  
201 W. Colfax, Dept. 608  
Denver, Colorado 80202

Manager of Parks and Recreation

201 W. Colfax, Dept. 601  
Denver, Colorado 80202

Manager of Comm. Planning and Develop.  
201 W. Colfax, Dept. 203  
Denver, Colorado 80202

**If to IRG:**

IRG Redevelopment I, LLC  
Attn: Brent Anderson  
7991 Shaffer Parkway, Suite 100  
Littleton, Colorado 80127

**With copies to:**

Foster Graham Milstein & Calisher, LLP  
Attn: David Wm. Foster, Esq.  
621 17<sup>th</sup> Street, 19<sup>th</sup> Floor  
Denver, Colorado 80293

**10. General Provisions.**

a. Time is of the Essence. It is understood and agreed between the parties that time is of the essence hereof, and all the agreements herein contained shall be binding upon and for the benefit of each party's successors and Permitted Assigns.

b. Default by City. A "breach" or "default" by the City under this Agreement shall be defined as the City's failure to fulfill or perform any material obligation of the City contained in this Agreement, provided, however, that a failure to appropriate funds shall not constitute a default.

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

d. Notices of Default; Cure Period. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified herein, and the defaulting party shall have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting party gives written notice to the non-defaulting party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

e. Remedies. If any default by the City under this Agreement is not cured as described above, IRG's exclusive remedies are specific performance except that, in the event of a breach by the City of obligations under Paragraph 3 hereunder, IRG may seek the remedies allowed by the Vesting Statute. If any default by IRG under this Agreement is not cured as described above, the City shall have all remedies available at law or in equity, including an

action for injunction and/or specific performance, or an action for actual damages, fees or costs, including attorneys fees, but not consequential or punitive damages.

f. Authority to Execute. The parties each represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind each party.

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

h. Assignment. The rights and obligations under this Agreement may not be assigned to any entity without the prior written consent of the other party, except the City hereby agrees that IRG may assign the responsibility for the financing, acquisition, planning, design, engineering, permitting, construction, completion, operation, maintenance, repair or replacement of any park, recreation or storm drainage facility or the financing of any other public infrastructure specified in this Agreement to the District in accordance with the District's Service Plan. Written notice of any such assignment shall be given to the City pursuant to this Agreement. If this Agreement is assigned, all the covenants and agreements herein contained shall be binding upon and inure to the benefit of the successors, assigns, heirs and personal representatives of the respective parties. With the prior written approval of the City's Manager of Public Works, IRG shall also have the right to assign or transfer all or any portion of its interests, rights and obligations under this Agreement to the District and/or third parties acquiring an interest or estate in the IRG Property, including, but not limited to, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the IRG Property, provided that to the extent IRG assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The approval of the Manager of Public Works and the express assumption of any of IRG's obligations under this Agreement by its assignee shall thereby relieve IRG of any further obligations under this Agreement with respect to the matter so assumed.

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

j. No Discrimination in Employment. In connection with the performance of work under this Agreement, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age military status, sexual orientation, marital status, or physical or mental disability. The parties further agree to insert the

foregoing provision in all subcontracts required hereunder.

k. When Rights and Remedies Not Waived. In no event shall any performance hereunder constitute or be construed to be a waiver by any party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach or default exists shall in no way impair or prejudice any right of remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of this Agreement shall be deemed or taken to be a waiver of any other default or breach.

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

m. Agreement as a Covenant. The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Site, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interests in the Site and all successors in interest to the parties to this Agreement. IRG may record this Agreement in the real property records at the Clerk and Recorder's office for the City and County of Denver.

n. Integrated Agreement, Extensions of Time and Amendments. This Agreement and the exhibits attached hereto or incorporated by reference constitute the entire, integrated agreement of the City and IRG with respect to the matters addressed herein. This Agreement may be amended only by the mutual written agreement of the City and IRG as follows:

(i) Extensions of time periods under this Agreement may be extended in writing by IRG and the City's Director of the Division of Real Estate and Manager of Public Works.

(ii) Any other amendment to this Agreement that may be approved and executed with the same formalities as this Agreement has been approved and executed provided that no City Council shall be required for such amendment unless required by City Charter.

o. IRG. For the purposes of any amendment to or termination of this Agreement, "IRG" shall mean only IRG Redevelopment I, LLC and those parties, if any, to whom IRG Redevelopment I, LLC may specifically grant, in writing, the power to enter into such amendment or termination.

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

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

r. Counterparts and Electronic Signatures and Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. The parties hereto consent to the use of electronic signatures by the parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by IRG and 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.

s. Appropriation. All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City. 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.

t. Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

u. No Personal Liability. No elected official, director, officer, agent, manager, member or employee of the City or IRG shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

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

w. No Merger. The parties intend that the terms of this Agreement shall survive closing of the Fire Station Parcel conveyance and shall not be merged into the deed conveying such parcel.

x. Memorandum. At IRG's request, the City shall sign a memorandum of this Agreement which may be recorded by IRG in the real property records of the City and shall run with the Site.

y. Right to Inspect Books. In addition to the rights the City has under Colorado Revised Statutes, Section 24-72-201, et. seq., IRG agrees that the City, the City's Auditor and any authorized representative of the City shall have the right during normal business hours to examine the books and records with respect to this Agreement, subject to applicable laws.

z. Days. All references to "days" in this Agreement are to business days, and not calendar days.

aa. Effective Date. The effective date of this Agreement shall be November 1, 2011. (the "Effective Date").

**\*\*\*\*\* SIGNATURES ON FOLLOWING PAGE\*\*\*\*\***



**“IRG”:**

IRG REDEVELOPMENT I, LLC  
a Colorado limited liability company

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

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

Title: \_\_\_\_\_

“CITY”

ATTEST:

CITY AND COUNTY OF DENVER  
a Colorado Municipal Corporation

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

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

APPROVED AS TO FORM:

Douglas J. Friednash,  
Denver City Attorney

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

REGISTERED AND COUNTERSIGNED:

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

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

## LIST OF EXHIBITS

**Exhibit A — Depiction of East Parcel and West Parcel, Sheet 5A of GDP**

**Exhibit B — Legal Description and Depiction of Fire Station Parcel (NEED from City)**

**Exhibit C — Form of Special Warranty Deed for Fire Station Parcel**

**Exhibit D — List of Documents**

**Exhibit E — Open Space and Trail Concept Plan, Sheet 8A of GDP**

**Exhibit F — Form of Revocable and Nonexclusive Access Permit**

**Exhibit G – Depiction of Shared Improvements and Permanent Easement Area (Need from City)**

**Exhibit H – Form of Permanent Easement (Need From City Exhibits to easement)**

**Exhibit I – GDP Vested Rights**

**EXHIBIT A**

**DEPICTION OF EAST PARCEL AND WEST PARCEL, SHEET 5A OF GDP**



**EXHIBIT B**

**LEGAL DESCRIPTION AND DEPICTION OF FIRE STATION PARCEL**

**NEED**

**EXHIBIT C**

**FORM OF SPECIAL WARRANTY DEED**

Upon Recording, Return to:  
Karen Aviles  
Denver City Attorney's Office  
1437 Bannock, Rm. 353  
Denver, CO 80202

**SPECIAL WARRANTY DEED**

IRG Redevelopment I, LLC, a Colorado limited liability company ("**Grantor**"), whose legal address is 7991 Shaffer Parkway, Suite 100, Littleton, Colorado 80127, for the consideration of TEN DOLLARS and other good and valuable consideration, in hand paid, the receipt and sufficiency of which is hereby acknowledged, hereby sells and conveys to the CITY AND COUNTY OF DENVER, a Colorado municipal corporation ("**Grantee**"), whose legal address is 1437 Bannock St., Denver, Colorado 80202, the following real property in the City and County of Denver, State of Colorado, to wit:

See Exhibit 1, attached hereto and incorporated herein

with all its appurtenances, and the Grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof by, through or under Grantor, except and subject to those matters set forth on Exhibit 2 attached hereto and incorporated herein ("Permitted Exceptions").

(SIGNATURE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the date set forth below.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011

GRANTOR:  
IRG Redevelopment I, LLC,  
a Colorado limited liability company

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

STATE OF COLORADO    )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
201\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_ corporation.

Witness my hand and official seal.  
My commission expires:

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

**Exhibit 1 to Deed  
Fire Station Parcel legal description**



**Exhibit 2 to Deed  
Permitted Exceptions**

## EXHIBIT D

### LIST OF ENVIRONMENTAL DOCUMENTS

1. **OU2 Corrective Action Plan**  
Phase 2 Corrective Action Plan OU2 Landfill Closure\_082903.PDF
2. **OU2 Completion Report**  
OU2 COMP Report\_text\_fig\_no att.pdf
3. **Latest OU2 Post Closure Monitoring Report**  
LTE-OU2 Report Q2-Q3-2010-Final\_no attachments.pdf
4. **Latest OU2 Post-Closure OM&M Report**  
Lowry\_Ou2 O&M Report\_Year4\_113010.pdf
5. **Finding of Suitability for Transfer (for West side of this Parcel – See Exception Parcel – Parcel Number 2)**  
Former Lowry Air Force Base FOST 12'1'05.pdf
6. **Finding of Suitability for early Transfer (Exhibit A-1 – for East side of this Parcel)**  
Cover Page  
Notice of Decision  
Request for Early Transfer  
Lowry 2 – Agreement on Execution  
Final FOSET  
FOSET Tables  
FOSET Attachment 1 – Property Map and Legals  
FOSET Attachment 2 – SEBS  
FOSET Attachment 2 A  
FOSET Attachment 2 B\_ groundwater summary  
FOSET Attachment 3 – Assessment of Risk  
FOSET Attachment 3 A  
FOSET Attachment 3 B  
FOSET Attachment 3 C  
FOSET Attachment 3 D  
FOSET Attachment 3 E  
FOSET Attachment 3 F  
FOSET Attachment 3 G  
FOSET Attachment 4 – Notice of Harzardous Substances...  
FOSET Attachment 4 A  
FOSET Attachment 4 B  
FOSET Attachment 5 – Environmental Protection Provisions  
FOSET Attachment 6 – Enforceable Agreement 2002  
First Amendment to Enforceable Agreement

Exhibit A – First Amendment to Enforceable Agreement  
FOSET Attachment 7 – ESCA 2002  
FOSET Attachment 7 – 1 - ESCA 2002  
FOSET Attachment 7 – 2 - ESCA 2002  
FOSET Attachment 7 – 3 - ESCA 2002  
FOSET Attachment 7 – 4 - ESCA 2002  
FOSET Attachment 7 – 5 - ESCA 2002  
FOSET Attachment 7 – 6 - ESCA 2002  
First Amendment to ESCA  
First Amendment to ESCA – Attachment 1  
First Amendment to ESCA – Attachment 2  
First Amendment to ESCA – Attachment 4  
First Amendment to ESCA – Attachment 7  
FOSET Attachment 8 – Consent Agreement 2002  
FOSET Attachment 8 A – Consent Agreement 2002  
FOSET Attachment 8 B – Consent Agreement 2002  
FOSET Attachment 8 C – Consent Agreement 2002  
First Amendment to Consent Agreement  
First Amendment to Consent Agreement – Exhibit D  
First Amendment to Consent Agreement – Exhibit E  
First Amendment to Consent Agreement – Exhibit F  
First Amendment to Consent Agreement – Figure 1  
First Amendment to Consent Agreement – Figure 2  
First Amendment to Consent Agreement – Figure 3  
FOSET Attachment 9 – Public Notice  
FOSET Attachment 10 – Responsiveness Summary

7. **RCRA Facility Assessment**  
Former\_Lowry\_AFB\_Final
8. **Deeds and Covenants**  
Negotiated Sale FOST Deed  
Negotiated Sale FOSET Deed  
Landfill Environmental Covenant
9. **Lowry Soils Management Plan**
10. **Tax Bill**
11. **Master Declaration and Design Guidelines**
12. **Complaint: Lowry Assumption, LLC v. American Specialty Lines Insurance Company**
13. **Waste Water Bill - paid**

**EXHIBIT E**

**OPEN SPACE AND TRAIL CONCEPT PLAN, SHEET 8A OF GDP**

**EXHIBIT E to Development and Vesting Agreement (Lowry Vista)**



## EXHIBIT F

### **FORM OF REVOCABLE AND NONEXCLUSIVE ACCESS PERMIT**

#### REVOCABLE AND NONEXCLUSIVE ACCESS PERMIT

This Revocable and Nonexclusive Access Permit (“Access Permit” or “Agreement”) is executed as of the Effective Date by and between IRG Redevelopment I, LLC a Colorado limited liability company (“Owner”) and the City and County of Denver, a Colorado municipal corporation and its officers, directors, and employees (“City” or “Permittee”).

WHEREAS, Owner and the City are entering into a Development and Vesting Agreement (“Agreement”) related to Owner’s property at 9000 E. Alameda, Denver, CO 80230 (the “Access Property”). The City plans to construct a fire station on a portion of the Access Property known as the “Fire Station Parcel,” which is legally described and generally depicted in Exhibit 1, attached hereto and incorporated herein and road improvements on a portion of the Access Property known as the “Permanent Easement Area”, attached hereto as Exhibit 2 and incorporated herein;

WHEREAS, a portion of the Access Property is identified as part of Operable Unit 2 (OU2), which is a former landfill under Post-Closure Monitoring with the Colorado Department of Public Health and Environment (“CDPHE”) and OU2 is restricted from public access, however the Fire Station Parcel and the Permanent Easement Area are not part of OU2;

WHEREAS, although the Fire Station Parcel and the Permanent Easement Area are not part of OU2, access to the Fire Station Parcel and the Permanent Easement Area will need to be coordinated with Owner due to the restrictions associated with OU2;

WHEREAS, the Access Property and the Fire Station Parcel and the Permanent Easement Area are also subject to the Lowry Soils Management Program, incorporated herein and attached hereto as Exhibit 3.

WHEREAS, Permittee desires to have access to and over the Fire Station Parcel and the Permanent Easement Area in order to perform the City Inspection activities set forth in the Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Access Permit, the parties agree as follows:

1. ACCESS. Permittee is hereby permitted access onto the Fire Station Parcel and the Permanent Easement Area to perform the work described in Exhibit 4, attached hereto and incorporated herein (“Scope of Work”). The access granted herein is nonexclusive and is completely revocable by the Owner at any time at the Owner's sole discretion. The Permittee agrees that all such activities conducted by Permittee shall be performed in accordance with the terms and conditions set forth herein.
  
2. PERMIT FEE. There is no permit fee associated with this Permit.

3. OWNER'S EXCLUSIVE RIGHT. Owner shall have the exclusive right to control, monitor and establish procedures applicable to Permittee's access to and over the Fire Station Parcel and the Permanent Easement Area. Owner shall have the right to revoke this Access Permit at any time.

4. SPECIAL CONDITIONS OF ACCESS. Permittee agrees to the following terms of access specifically applicable to the work to be performed by Permittee at the Fire Station Parcel and the Permanent Easement Area under this Access Permit, in addition to all other general terms and conditions set forth herein.

a. The Scope of Work described on Exhibit 4, including the schedule for performing the Scope of Work and a map depicting the location of the work to be performed under the Scope of Work is hereby approved by the Owner.

b. There shall be no modifications to the Scope of Work, unless the Permittee has obtained the prior written consent of Owner thereto. Review and approval of modifications to the Scope of Work shall be as follows:

(i) For activities that do not include Soil Disturbing Activities, as defined below, any comments to the modifications to the Scope of Work by IRG shall be given to Permittee within two (2) days of receipt of the modifications to the Scope of Work. Any comments shall be cooperatively considered by the Permittee, but Permittee shall have the right to access the Fire Station Parcel and Permanent Easement Area within seven (7) days of the modification of Scope of Work request. "Soil Disturbing Activities" are defined excavation, grading, tilling, or any other mechanical activity used to disturb the soil, including but are not limited to, excavation, construction, installation and maintenance of utilities, and any other intrusive activities.

(ii) For activities that do include Soil Disturbing Activities, any comments to the modifications to the Scope of Work shall be given to Permittee within two (2) days of receipt of the modifications to the Scope of Work, including whether approval is required under the Deed Restrictions. Deed Restrictions shall mean those deed restrictions shown in the Deed recorded at Reception No. \_\_\_\_\_ that encumber the Fire Station Parcel and the Permanent Easement Area that restrict subsurface drilling and withdrawal of ground water unless prior approval is obtained from federal and state regulatory agencies with jurisdiction over the Fire Station Parcel and the Permanent Easement Area. Any comments to the activities shall be cooperatively considered by Permittee and IRG.

(iii) Permittee shall have the right to access the Fire Station Parcel and the Permanent Easement Area immediately upon approval of the modifications of the Scope of Work by IRG.

c. Access of Permittee to the Fire Station Parcel and the Permanent Easement Area shall be in accordance with this Access Permit and any special instructions received from the Owner. Permittee shall notify Owner in writing at least two (2) business days notice prior to the start of any Scope of Work activities. Owner will provide special instructions regarding access

logistics during that time. Owner shall serve as the sole point of communication for Permittee about the Scope of Work.

d. Permittee agrees to coordinate all Soil Disturbing Activities with Owner, and Owner, in cooperation with Permittee, shall notify and obtain approvals, if necessary, from the appropriate regulatory authorities for such Soil Disturbing Activities.

e. Permittee understands that Owner has an Oversight Agreement with Lowry Assumption, LLC for the Access Property, the Fire Station Parcel and the Permanent Easement Area. Nothing herein shall alter the rights and obligations of the City, the Owner or Lowry Assumption, LLC under the Oversight Agreement.

f. Permittee shall not interfere with the ordinary business activities of the Owner on the Access Property and shall abide by the Site Access Rules in Exhibit 5, attached hereto and incorporated herein. If Permittee materially disturbs the condition of the Access Property, Permittee shall, upon completion of the activities, restore the Owner's property to the condition of the property prior to Permittee's activities, unless otherwise shown on the approved Scope of Work or as agreed to between Owner and Permittee.

g. Permittee understand the currently known hazards and risks to human beings, property and the environment in the handling, storage, treatment, processing, and disposal of any contaminated soil, groundwater, and/or other materials ("Environmental Media") that may be found to exist at the Fire Station Parcel and Permanent Easement Area as a result of the historic activities of the U.S. Air Force.

h. If a separate Access Permit is not obtained by the City's contractors, the City shall cause its contractors to assume full risk of damage and loss to all vehicles, equipment and premises of Owner on the Fire Station Parcel and Permanent Easement Area, to the extent the contractor is responsible for such damage and/or loss, and to vehicles and other equipment used by the contractor, which may be located on the Fire Station Parcel and Permanent Easement Area. If a separate Access Permit is not obtained by the City's contractors, the City shall cause its contractor to further assume responsibility for claims by any and all federal, state or other entities for environmental clean-up or restoration caused by a release of any hazardous or toxic materials by the contractor caused by the implementation of the Scope of Work, including, but not limited to, claims under CERCLA and all other Federal and State statutes and regulations now in effect or promulgated hereafter related to the conduct of contractor.

i. Permittee shall furnish Owner copies of all data, results, logs, photographs, drawings, and sample collection chain of custody documents within five business days of receipt of same by Permittee.

5. COSTS. All costs and expenses of the activities conducted by Permittee under this Access Permit shall be at no cost or expense to Owner.

6. INDEMNIFICATION. If a separate Access Permit is not obtained by the City's contractors, the City shall cause its contractors to defend, hold harmless and reimburse Owner, their shareholders, officers, directors, employees, representatives and agents from and against

any and all claims, losses, costs, expenses, liabilities, suits, or damages arising from, relating to or resulting from the City or Permittee's entry onto the Fire Station Parcel and Permanent Easement Area and Scope of Work activities, including access issues described in Paragraph 4, including, without limitation, any claim pursuant to RCRA, CERCLA or any other applicable federal or state statutes and regulations, whether due to personal injury, death, property damage, environmental impairment or otherwise.

7. COMPLIANCE WITH LAWS. Permittee, while it is performing the Scope of Work under this Access Permit, shall observe and comply with any applicable provisions of ordinances, rules and regulations of the City and County of Denver, and all Colorado and federal laws which in any manner limit, control or apply to the Scope of Work performed by the Permittee. Except as set forth herein, Permittee shall obtain, at no cost to Owner, all necessary permits for any of the Scope of Work to be performed under this Access Permit. Owner shall not be responsible to pay any fines, assessments and fees related to work under this Access Permit.

8. LIENS. Permittee shall not to permit any lien, mortgage, judgment or execution to be filed against the Fire Station Parcel or Permanent Easement Area or improvements thereon.

9. INSURANCE. If a separate Access Permit is not obtained by the contractor, the City shall cause its contractor to secure, at its own expense, and to keep in force at all times, the insurance in accordance with Exhibit 6. The City is self insured and Owner agrees that insurance pursuant to Exhibit 6 is not required of the City.

10. TERM. This Permit shall commence upon execution and terminate forty-five (45) days after execution, unless extended by mutual written consent of the Owner and the Permittee's Manager of Public Works.

11. NOTICES. All notices required to be given hereunder shall be in writing and sent by certified mail, return receipt requested, to:

Owner: Ann Wei  
IRG Redevelopment I, LLC  
7991 Shaffer Parkway, Suite 300  
Littleton, Co 80127  
(303) 972-6633

City: Mayor  
1437 Bannock, Rm 350  
Denver, CO 80202  
  
Manager of Public Works  
201 W. Colfax, Department 601  
Denver CO 80202

City Attorney's Office  
1437 Bannock, Rm 353  
Denver, CO 80202



Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to the other party.

12. AUTHORITY TO EXECUTE. The person signing for the respective parties represent that each has the authority to sign on behalf of and bind the respective party.

13. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color religion, national origin, gender, age military status, sexual orientation, marital status, or physical or mental disability. The parties further agree to insert the foregoing provision in all subcontracts required hereunder.

14. SUBJECT TO LOCAL LAWS, VENUE. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and, except as otherwise specified, the Ordinances and regulations of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

15. COUNTERPARTS AND ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. The parties hereto consent to the use of electronic signatures by the parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by IRG and 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.

16. APPROPRIATION. All obligations of the City under and pursuant to this Agreement are subject to prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City. 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.

17. REASONABLENESS OF CONSENT OR APPROVAL. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

18. NO PERSONAL LIABILITY. No elected official, director, officer, agent, manager, member or employee of the City or IRG shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

19. CONFLICT OF INTEREST BY CITY OFFICERS. IRG represents that to the best of its information and belief no officer or employee of the City is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

20. RIGHT TO INSPECT BOOKS. In addition to the rights the City has under Colorado Revised Statutes, Section 24-72-201, et. seq., IRG agrees that the City, the City's Auditor and any authorized representative of the City shall have the right during normal business hours to examine the books and records with respect to this Agreement, subject to applicable laws.

21. EFFECTIVE DATE. The effective date of this Agreement shall be November 1, 2011, (the "Effective Date").

THIS ACCESS PERMIT is executed as of the Effective Date.

SIGNATURES ON FOLLOWING PAGES

Attest:

PERMITTEE:  
CITY AND COUNTY OF DENVER

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

Debra Johnson  
Clerk and Recorder, Ex officio Clerk  
Of the City and County of Denver

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

Mayor

REGISTERED AND COUNTERSIGNED:

Approved as to Form  
Douglas J. Friednash  
Denver City Attorney

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

Manager of Finance

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

Assistant City Attorney

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

Auditor

**OWNER:**

**IRG REDEVELOPMENT I, LLC**

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

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

**Title:** \_\_\_\_\_

**Date:**  
\_\_\_\_\_

EXHIBIT 1  
FIRE STATION PARCEL

EXHIBIT 2  
PERMANENT EASEMENT AREA

EXHIBIT 3  
LOWRY SOILS MANAGEMENT PLAN

EXHIBIT 4  
SCOPE OF WORK



EXHIBIT 5  
SITE ACCESS RULES

1. Site hours are 7:30 a.m. to 3:30 p.m., Monday through Friday. All Permittees shall be off site by 3:30 p.m. unless otherwise approved by IRG Redevelopment I, LLC.
2. Hard hats and safety vests are required on site when outside of the vehicle in any construction area. The City is required to sign in with the Owner's Site Manager on site prior to commencement of any activities.
3. This is a construction site. Be extremely cautious while on site, of drop offs at runway edges, debris on runways taxiways and haul trucks and their haul routes. It is recommended that spare vehicle tires be checked periodically before entering the site.
4. It is recommended that cellular telephones be carried while on site. Owner's Site Manager, John Yerton, can be reached at 303-304-2933.
5. This site contains hazards, both obvious and hidden, due to its former use and current maintenance levels. Owner does not assume all risk associated with site access, use and travel.

**EXHIBIT 6  
CONDITIONS OF INSURANCE**

If the City’s contractors do not obtain a separate Access Permit, the City shall cause its contractors, subcontractors or sub-subcontractors that performs work under this Access Permit to maintain insurance meeting coverage and insurance carrier requirements acceptable to IRG Redevelopment I, LLC (IRG) and to provide IRG with a duplicate original of each such insurance policy and certificate of insurance. Without limitation of the foregoing, the insurance must:

- a. Name IRG, and its predecessors, affiliates and successors, officers, employees, agents and representatives additional insureds as respect to this contract for coverage at least as broad as Insurance Services Office (ISO) 2026 1185 or its equivalent for general liability;
- b. Endorse this Agreement onto its policies as an Insured Contract.
- c. Provide IRG with defense and defense costs for additional insureds outside insurance limits; and,
- d. Offer per project aggregates for general liability.

The following minimum amounts and types of insurance should be maintained at all times. Please provide insurance certificates on the following:

Type	Minimum Amount
Commercial General Liability	<ul style="list-style-type: none"> <li>▪ \$2,000,000 per occurrence/\$2,000,000 general aggregate including:</li> <li>▪ Completed operations for \$2,000,000/\$2,000,000</li> <li>▪ Maximum per occurrence deductible - \$10,000</li> <li>▪ \$2,000,000 personal and advertising injury</li> </ul>
Professional Liability	<ul style="list-style-type: none"> <li>▪ \$2,000,000 per claim/\$2,000,000 aggregate</li> <li>▪ Include coverage for environmental exposures</li> <li>▪ Maximum \$25,000 deductible</li> </ul>
Automobile Liability including coverage for all owned, non-owned, hired and leased vehicles.	<ul style="list-style-type: none"> <li>▪ \$2,000,000 combined single limit</li> <li>▪ Form at least as broad as ISO for CA 0002 (12/93)</li> <li>▪ Symbol 1</li> <li>▪ CA 9948 Broadened Pollution Endorsement must be added</li> </ul>
Workers’ Compensation	<ul style="list-style-type: none"> <li>▪ Statutory Requirements</li> </ul>

<u>Type</u>	<u>Minimum Amount</u>
Employer's Liability, Occupational Disease or similar laws including U. S. Longshore and harbor Workers Act, Federal Employees Liability Act and Jones Act and Stop Gap Liability, if applicable	<ul style="list-style-type: none"> <li>▪ \$1,000,000 Bodily Injury each accident</li> <li>• \$1,000,000 Bodily Injury by disease (Policy Limit)</li> <li>• \$1,000,000 Bodily Injury by disease (each employee)</li> <li>• Voluntary Compensation and Employer Liability</li> </ul>
Contractor's Environmental Liability	<ul style="list-style-type: none"> <li>▪ \$2,000,000 per occurrence/\$2,000,000 aggregate</li> <li>▪ Completed Operations \$2,000,000 per occurrence/\$2,000,000 aggregate (minimum two years)</li> <li>▪ No exclusion for aquifers</li> <li>▪ No exclusion for natural resource damage</li> <li>▪ Coverage to include: hazardous substances as defined by Federal, State or local statutes and regulations and include any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, chemicals, alkalis and waste material.</li> </ul>

All required policies and the certificates evidencing same shall contain the following endorsement:

Insurance required hereunder shall be provided by companies duly licensed to transact business in Colorado, and maintaining during the policy term a "General Policyholders Rating" of at least "A" "AVII", as set forth in the most current issue of "Best's Insurance Guide." Permittee shall not do, or permit to be done, anything which shall invalidate the insurance policies referred to herein.

Permittee shall, at least thirty (30) days prior to the expiration of any policy required hereunder, furnish IRG with evidence of renewals or "insurance binders" evidencing renewal thereof, or IRG may order such insurance and charge the cost thereof to Permittee, which amount shall be payable by contractor to IRG upon demand.

Permittee shall notify IRG in writing when coverages required herein have been reduced as a result of claims payments expenses or both. All policies must be endorsed to be primary with all policies of IRG being excess and noncontributory. All policies will be endorsed to provide a waiver of subrogation in favor of the IRG.

**EXHIBIT G**

**DEPICTION OF SHARED IMPROVEMENTS, GRADING AREA, AND PERMANENT  
EASEMENT AREA**

## **EXHIBIT H**

### **FORM OF EASEMENT**

#### **EASEMENT**

**THIS EASEMENT** ("Easement") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, from **IRG Redevelopment I, LLC**, a Colorado limited liability company with an address of \_\_\_\_\_, Denver, Colorado 80\_\_\_ ("Grantor"), to the **City and County of Denver**, a Colorado municipal corporation and home rule city, with an address of 1437 Bannock, Denver, Colorado 80202 ("Grantee").

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, conveys and warrants unto Grantee, its contractors, subcontractors, the general public and its successors and assigns, a non-exclusive, perpetual easement in, on, over, under, or through that real property which is legally described and depicted in **Exhibit 1** 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 the purpose of (i) vehicular and pedestrian access to that real property owned by Grantee legally described and depicted on **Exhibit 2** attached hereto and incorporated herein by this reference (the "Fire Station Parcel") and (ii) the construction, maintenance, operation, repair, replacement, or reconstruction, of an access road, curb, gutter, sidewalk landscaping, and utilities, including a sanitary sewer, within the Easement Area (the "Improvements"). The Improvements and the Easement Area shall be for the use and benefit of the Fire Station Parcel and the real property owned by Grantor which is legally described and depicted in **Exhibit 3** attached hereto and incorporated herein by this reference ("Grantor Property").

Except to the extent necessary to construct the Improvements and as necessary to achieve the purposes of this Easement, Grantee shall cause the repair and/or restoration of any and all damage caused by Grantee, its agents, contractors, subcontractors, licensees, or invitees to the Easement Area or Grantor's Property..

Grantee shall have all rights, privileges and benefits necessary or convenient for the full use and enjoyment of the Easement Area subject to the terms of this Easement. Grantee shall not access any other property of Grantor. Grantor shall have the right to use and enjoy the Easement Area, subject to the rights herein granted. Grantor agrees not to build, create, construct or permit to be built, created or constructed, any obstruction, building, fence, or other structures over, under, on or across the Easement Area without prior written consent of Grantee; provided however, that Grantor may construct or install roadway improvements, curb, gutter, landscaping, and utilities within the Easement Area without the consent of Grantee under this Easement. Nothing herein shall impair Grantee's police powers.

The rights granted herein may be assigned in whole or in part, and 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. This Easement shall automatically terminate as to any portion of the Easement Area that is dedicated as public right-



ATTEST:

CITY AND COUNTY OF DENVER  
a Colorado Municipal Corporation

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

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

APPROVED AS TO FORM:

Douglas J. Friednash  
Denver City Attorney

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

REGISTERED AND COUNTERSIGNED:

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

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

**Exhibit 1 to Easement  
Easement Area legal description**



**Exhibit 2 to Easement  
Fire Station Parcel legal description**

**Exhibit 3 to Easement  
Grantor Property legal description**

**EXHIBIT I**

**GDP VESTED RIGHTS**

1. Densities. The following maximum densities are vested:

Dwelling Units East Parcel	600 Dwelling Units
Retail square footage East Parcel	400,000 gsf
Office square footage East Parcel	120,000 gsf
Hotel square footage East Parcel	75,000 gsf
West Parcel Dwelling Units	247 Dwelling Units

2. Signalized Intersections. A full-movement signalized intersections at Alameda Avenue and S. Xenia Street, S. Clinton Street, and S. Dayton Street. Additional street width may be required at the approaches to these intersections to allow for adequate turn lanes, turning widths and signal operations. Nothing herein shall preclude the City from making changes to the intersections to provide for and maintain the same and efficient operation of the intersections.
3. Multiple Buildings on Zone Lots. For the East Parcel and the West Parcel, the right to construct two or more structures or buildings within one zone lot with a minimum distance between the buildings of ten (10) feet is vested; provided however, that the owner may elect to construct two or more structures or buildings on one zone lot less than ten (10) feet apart if this is allowed by the City’s building or zoning code.
4. Street Cross Sections. The right to construct streets within the Site that are not dedicated to the City in the future, based on the following street cross sections in the noted locations are vested. For intersections of such non-City streets with Alameda Avenue, additional street width may be required at the approaches to these intersections to allow for adequate turn lanes, turning widths and signal operations.
5. Storm Water Conveyance Facilities and Water Quality Detention. The right to construct necessary and appropriate storm water conveyance facilities to serve the Site and water quality detention ponds located in the Westerly Creek wetlands area and appurtenant conveyancing facilities related thereto are vested but only to the extent such facilities are approved by all entities having jurisdiction over such matters and only if such facilities, at the time of construction, comply with the City, State and Federal laws, rules and regulations.
6. Sanitary Sewer Facilities. The right to construct the sanitary sewer facilities necessary to serve the Site and to tie into the existing City sanitary sewer facilities located in Alameda Avenue is vested but only to the extent such facilities are approved by all entities having jurisdiction over such matters and only if such facilities, at the time of construction, comply with the City, State and Federal laws, rules and regulations.