

**LICENSE AGREEMENT**  
**(South Broadway Station License Parking Lot)**

**THIS LICENSE AGREEMENT** (“Agreement”) is entered into by the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **SOUTH BROADWAY STATION APARTMENTS LLC**, a limited liability company with its principal place of business at 5847 San Felipe Street, Suite 3600, Houston, Texas 77057 (“Licensee”), collectively, “the Parties.”

1. Agreement. Upon execution of this Agreement, the City grants a revocable and non-exclusive license (“License”) to Licensee for the purpose of constructing a parking lot on the portion of the vacant land located at 1134 South Broadway and 1136 South Broadway, Denver, Colorado and legally described on **Exhibit A** attached hereto and incorporated herein by this reference (“Parking Lot”) and for use by Licensee’s employees, tenants and invitees to use the Parking Lot for vehicular and pedestrian access and parking of motor vehicles.
2. Retained Rights of City. The City retains the right of possession and the rights of use, occupancy, and control of the Parking Lot, but such use, occupancy and control shall not unreasonably interfere with the exercise of the License as granted and conditioned in this Agreement.
3. Use and Condition of Parking Lot. As a condition of the License, Licensee shall be responsible for all damage caused to the Parking Lot by Licensee that is not the result of normal wear and tear. The Parking Lot shall be in its “as is” condition as of the date of the commencement of the License. The City shall have no obligation to maintain, repair or replace the Parking Lot or any appurtenances thereto. Upon expiration of the Term (hereinafter defined) or earlier revocation by the City pursuant to Section 6 of this Agreement, the City will have an option to cause Licensee to remove the improvements installed by Licensee and return the Parking Lot to the condition existing as of the Commencement Date (hereinafter defined).
4. Term. This Agreement shall commence upon delivery of fully-executed counterpart of this Agreement to Licensee (the “Commencement Date”) and shall end on December 31, 2018. The Parties may extend the Term on a monthly basis for up to one (1) additional year by executing a written extension memorandum incorporating the terms of this Agreement. The City’s Director of the Division of Real Estate is authorized to sign the extension memorandum without further approval by Council Approval.
5. Improvements. Licensee or its contractors shall construct a parking lot on the land, including temporary lighting and fencing. Licensee shall be responsible for procuring any zoning or permits required for use as a temporary Parking Lot.
6. Revocation & Termination. The City has the right to revoke the License, and terminate this Agreement, for a violation of the terms, conditions, warranties and covenants of this Agreement by Licensee that remains uncured thirty (30) days after written notice of such violation is delivered by the City to Licensee; provided, however, no cure period shall apply to the payment of the Monthly Fee (hereinafter defined).

7. Costs & Fees. The exercise of the License herein granted and other rights and obligations under this Agreement shall be without cost or expense to the City. The Licensee shall pay the City the fee of Three Thousand Dollars and 00/100 Cents (\$3,000) per month (the “Monthly Fee”) on or before the fifth (5<sup>th</sup>) day of each and every month during the Term, commencing on the Commencement Date and prorated for any partial month.

8. Permits & Compliance. The Licensee shall comply with all applicable laws, rules, regulations, and requirements relating to the License. The Licensee shall provide copies of any use permits upon the request of the Director of the Division of Real Estate (“Director”). Nothing in this Agreement shall relieve Licensee from complying with other regulatory requirements applicable to the License.

9. Damage to City Property. Any real or personal property of the City damaged or destroyed by the Licensee that is not a result of normal wear and tear shall be promptly repaired or replaced by Licensee to the satisfaction of the Director. For failure or refusal by the Licensee to comply with this paragraph, the City shall have the right to seek recovery of actual damages, costs, expenses, and reasonable attorneys’ fees from the Licensee by any means available under the law.

10. Third Party Contracts. The Licensee has no authority to bind the City on any contractual matters. The City shall have no liability or financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the Licensee contracts or has a contractual arrangement with respect to the License or other aspects of this Agreement.

11. Insurance.

(a) General Conditions. The Licensee shall secure, at or before the time of execution of this Agreement, the following insurance covering the License. The Licensee shall keep the required insurance coverage in force at all times during the Term of this Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-” VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement and shall reference the City contract number listed on the signature page of this Agreement. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Licensee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Licensee. Licensee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Licensee. The Licensee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(b) Proof of Insurance. Licensee shall provide a copy of this Agreement to its insurance agent or broker. Licensee may not commence the use of the License relating to this Agreement prior to placement of coverages required under this Agreement. Licensee certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Licensee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(c) Additional Insureds. For Commercial General Liability, the Licensee's insurer shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) Waiver of Subrogation. For all coverages, the Licensee's insurer shall waive subrogation rights against the City.

(e) Workers' Compensation/Employer's Liability Insurance. Licensee shall maintain the coverage as required by statute and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Licensee expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Licensee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the Licensee executes this Agreement.

(f) Commercial General Liability. The Licensee shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

(g) Business Automobile Liability. Contractor shall maintain Business Automobile Liability, or its equivalent, with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

(h) Garagekeepers Liability. Contractor shall maintain Garagekeepers Liability Insurance with limits of \$1,000,000 aggregate.

(i) Additional Provisions.

(i) For Commercial General Liability, the policy must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, separation of insureds provision (no

insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:

(a) The retroactive date must be on or before the commencement date of this Agreement.

(b) Licensee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Licensee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

12. Indemnification. Licensee releases and indemnifies and saves harmless the City, its officers, agents, and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify, and save harmless the City, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liability, actions, penalties, or proceedings of any kind or nature, including without limitations worker's compensation claims, of or by anyone, which with respect to any of the foregoing in any way results, from, or arises out of, directly or indirectly, Licensee's use or occupancy of any portion of the Parking Lot or use of the License, and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of the Licensee; provided, that the Licensee need not release, indemnify or save harmless the City, its officers, agents, and employees from damages, injuries or death of any person or persons resulting from the actions or omissions of the City's officers, agents, or employees. The minimum insurance requirements prescribed in this Agreement shall not be deemed to limit or define the obligations of the Licensee.

13. Damage or Injury. The City shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Licensee's use of the Parking Lot under this Agreement and are not due to the actions or omissions of the City's officers, agents or employees. It is expressly understood and agreed that the City is relying upon, and has not waived, the monetary limitations (presently \$350,000 per person, \$990,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

14. Notices. All notices required to be given to the City or Licensee shall be in writing and sent by certified mail, return receipt requested, to:

Licensee: South Broadway Station Apartments LLC  
c/o the Hanover Company  
5487 San Felipe Street, Suite 3600  
Houston, Texas 77057  
Attn: Kathy K. Binford

With Copy to: IMP South Broadway LLC  
c/o GID  
125 High Street, High Street Tower, 27<sup>th</sup> Floor  
Boston, Massachusetts 02110

Attn: Jason Sweatt

City: Director  
Division of Real Estate  
201 West Colfax Avenue, Department 1010  
Denver, Colorado 80202

City Attorney's Office  
201 West Colfax Avenue, Department 1207  
Denver, Colorado 80202

Any party may designate in writing from time to time the address of substitute or additional persons to receive such notices. The effective date of service of any such notice is the date it is actually received.

15. Compliance with Laws. All persons or entities utilizing the Parking Lot pursuant to this Agreement shall observe and comply with the applicable provisions of the Charter, ordinances, and rules and regulations of the City and with all applicable Colorado and federal laws.

16. Applicable Law; Venue. This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the United States of America. Venue for any legal action relating to this Agreement shall lie solely in the District Court in and for the City and County of Denver

17. Amendment. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied in writing in the same formality as this Agreement. Any representations made by any officer, agent or employee of the respective parties unless included in this Agreement are null and void and of no effect. No subsequent notation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this Agreement.

18. Severability. The promises and covenants contained in this Agreement are several in nature. Should any provision of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement. However, if the license is deemed invalid or unenforceable, the Agreement shall terminate.

19. Exhibits. All exhibits attached to this Agreement are incorporated in this Agreement by reference. To the extent there is a conflict or inconsistency between the language of this Agreement and any exhibit, the language of this Agreement shall control.

20. Third Party Beneficiaries. It is expressly understood and agreed upon that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Licensee, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person of this Agreement, including but not limited to subcontractors, subconsultants, and suppliers. It is

the express intention of the City and Licensee that any person other than the City or the Licensee receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21. 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.

22. Conflict of Interest by City Officers. The Licensee 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.

23. No Construction against the Drafting Party: The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

24. Electronic Signatures and Electronic Records: Licensee consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature under this Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this 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 this 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.

25. Authority. The persons who affixed the signatures hereto on behalf of the Licensee attest and affirm they have authority to execute this Agreement on behalf of Licensee.

26. Execution. This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**Signatures on following pages.**

**Contract Control Number:**

**Licensee Name:**

**South Broadway Station Apartments LLC**

IN WITNESS WHEREOF, the Parties have set their hands and affixed their seals at Denver, Colorado as of April \_\_\_\_\_, 2018.

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By\_\_\_\_\_

By\_\_\_\_\_

LICENSEE:

SOUTH BROADWAY STATION APARTMENTS LLC

By: THC BS LLC, its Manager

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

Name:

Title:



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** FINAN-201840879-00

**Contractor Name:** South Broadway Station Apartments LLC

By: THC BS LLC, its Manager

By: *Kathy K. Binford*

KATHY K. BINFORD  
VICE PRESIDENT

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

By: *Shirley Banks Robinson*

Name: SHIRLEY BANKS ROBINSON  
(please print)

Title: ASSISTANT SECRETARY  
(please print)



## EXHIBIT A

CITY AND COUNTY OF DENVER  
STATE OF COLORADO  
UNECONOMIC REMNANT AND DAMAGED REMAINDER PARCEL  
CITY AND COUNTY OF DENVER PROJECT CE-93007

EXHIBIT "A"  
104-RM  
NOVEMBER 27, 2012

A parcel of land No. 104-RM of the City and County of Denver, State of Colorado, Project Number CE-93007, Colorado Department of Transportation Project No. 18453, and Federal Aid Project No. STU M320-074, containing 2,442 square feet or 0.056 acre, more or less, within a parcel of land as described by Deed at Reception No. 2005075710, records of the City and County of Denver, State of Colorado, also being a portion of Lot 10 of Block 8 of the Official Survey of Sherman Subdivision as adopted by Ordinance No. 3 of 1895 passed January 12, 1895, except for that parcel of land condemned in Book 2191 at Page 394, records of the City and County of Denver, State of Colorado, in the Northeast Quarter of Section 22, Township 4 South, Range 68 West, of the Sixth Principal Meridian, City and County of Denver, Colorado, said parcel being more particularly described as follows:

Bearings are based upon the 20-foot range line in Mississippi Avenue that defines the north line of said Block 8 as monumented by a 3.25-inch aluminum cap stamped "PLS 35583" in a range box at the west end and monumented by a 1-inch axle in a range box at the east end, said 20-foot range line is assumed to bear North 89°54'28" East;

Commencing at the intersection of the north line of said Lot 10 and the east line of said condemned parcel of land, whence said 3.25-inch aluminum cap bears North 04°56'04" West a distance of 246.20 feet;

Thence North 89°51'39" East along said north line a distance of 28.14 feet to the Point of Beginning;

Thence North 89°51'39" East continuing along said north line a distance of 96.89 feet to the east line of said Lot 10;

Thence departing said north line South 00°26'00" East along said east line a distance of 25.02 feet to the south line of said Lot 10;

Thence departing said east line South 89°51'20" West along said south line a distance of 98.33 feet to a point 26.77 feet east of said east line of the condemned parcel of land, also being a point of non-tangency;

Thence departing said south line 25.07 feet along the arc of a curve to the left, having a radius of 1561.00 feet, through a central angle of 0°55'12", whence the initial radial bears North 86°39'45" West, to said north line, also being the Point of Beginning;

The above described parcel contains 2,442 square feet or 0.056 acre, more or less.

Exhibit attached and by this reference made a part hereof.

CITY AND COUNTY OF DENVER  
STATE OF COLORADO  
UNECONOMIC REMNANT AND DAMAGED REMAINDER PARCEL  
CITY AND COUNTY OF DENVER PROJECT CE-93007

EXHIBIT "A"  
105-RM  
NOVEMBER 27, 2012

A parcel of land No. 105-RM of the City and County of Denver, State of Colorado, Project Number CE-93007, Colorado Department of Transportation Project No. 18453, and Federal Aid Project No. STU M320-074, containing 2,411 square feet or 0.055 acre, more or less, within a parcel of land as described by Deed at Reception No. 9900002160, records of the City and County of Denver, State of Colorado, also being a portion of Lot 9 of Block 8 of the Official Survey of Sherman Subdivision as adopted by Ordinance No. 3 of 1895 passed January 12, 1895, except for that parcel of land condemned in Book 2191 at Page 394, records of the City and County of Denver, State of Colorado, in the Northeast Quarter of Section 22, Township 4 South, Range 68 West, of the Sixth Principal Meridian, City and County of Denver, Colorado, said parcel being more particularly described as follows:

**Bearings** are based upon the 20-foot range line in Mississippi Avenue that defines the north line of said Block 8 as monumented by a 3.25-inch aluminum cap stamped "PLS 35583" in a range box at the west end and monumented by a 1-inch axle in a range box at the east end, said 20-foot range line is assumed to bear North 89°54'28" East;

**Commencing** at the intersection of the north line of said parcel of land described by Deed, also being the north line of said Lot 9, and the east line of said condemned parcel of land, whence said 3.25-inch aluminum cap bears North 05°27'49" West a distance of 221.25 feet;

Thence North 89°51'57" East along said north line a distance of 29.11 feet to the **Point of Beginning**;

Thence North 89°51'57" East continuing along said north line a distance of 95.84 feet to the east line of said parcel of land described by Deed, also being the east line of said Lot 9;

Thence departing said north line South 00°26'00" East along said east line a distance of 25.02 feet to the south line of said parcel of land described by Deed, also being the south line of said Lot 9;

Thence departing said east line South 89°51'39" West along said south line a distance of 96.89 feet to a point 28.14 feet east of said east line of the condemned parcel of land, also being a point of non-tangency;

Thence departing said south line 25.05 feet along the arc of a curve to the left, having a radius of 1561.00 feet, through a central angle of 0°55'10", whence the initial radial bears North 87°34'57" West, to said north line of a parcel of land described by Deed, also being the north line of said Lot 9, also being the **Point of Beginning**;

The above described parcel contains 2,411 square feet or 0.055 acre, more or less.

Exhibit attached and by this reference made a part hereof.



EXHIBIT B

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/04/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with columns for PRODUCER, CONTACT NAME, PHONE, FAX, E-MAIL ADDRESS, INSURER(S) AFFORDING COVERAGE, and NAIC #.

COVERAGES CERTIFICATE NUMBER: HOU-003405491-01 REVISION NUMBER: 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF, POLICY EXP, LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Garage Keepers Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project: 16-498 - Broadway Stations, 11 & 99 East Arizona, Denver, CO 80210
RE: Construction of a parking lot on vacant land located at 1134 S. Broadway & 1136 S. Broadway, Denver CO 80210

The City and County of Denver, it's Elected and Appointed Officials, Employees and Volunteers are included as Additional Insureds with respect to the Commercial General Liability and Business Auto policies. Waiver of Subrogation is applicable where required by written contract, subject to policy terms, conditions, endorsements and exclusions.

Table with columns: CERTIFICATE HOLDER (City and County of Denver) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Authorized Representative: Manashi Mukherjee).