

RECORD OF PROCEEDINGS

MINUTES OF THE COORDINATED REGULAR MEETING OF BROADWAY STATION METROPOLITAN DISTRICT NO. 1 BROADWAY STATION METROPOLITAN DISTRICT NO. 2 AND BROADWAY STATION METROPOLITAN DISTRICT NO. 3

HELD

MARCH 28, 2022

The Coordinated Regular Meeting of the Boards of Directors (“**Board**”) of the Broadway Station Metropolitan District No. 1 (“**District No. 1**”), Broadway Station Metropolitan District No. 2 (“**District No. 2**”) and Broadway Station Metropolitan District No. 3 (“**District No. 3**”, and together with District No. 1 and District No. 2, the “**Districts**”) was held on March 28, 2022 at 1:00 p.m. Due to public health restrictions, this meeting was held via Zoom: <https://us02web.zoom.us/j/87484098763>; Webinar ID: 874 8409 8763.

ATTENDANCE

Directors in Attendance were:

Mark Tompkins
Tom Berger
Elizabeth Lee
Lisa Ingle

Absent (excused):

None.

Also in Attendance were:

Paul R. Cockrel, Cockrel Ela Glesne Greher & Ruhland, P.C.
 (“**CEGR**”)
Sarah H. Luetjen, CEGR
Jason Carroll, CliftonLarsonAllen, LLP
Dan Jacobs

NOTICE

Notice of the meeting had been properly posted as required by law.
The notice also included the agenda items.

DISCLOSURE OF
POTENTIAL CONFLICTS
OF INTEREST

Mr. Cockrel reported that general conflict of interest statements for Directors Ingle, Tompkins, and Berger had previously been received and filed with the Secretary of State at least 72 hours in advance of the meeting disclosing their respective potential conflicts of interest as follows:

Director Ingle is employed by Broadway Station Partners, LLC or its affiliates (“**Company**”), which is the principal owner and developer of property within the Districts. She personally is not an owner, creditor, officer or director of the Company. Director Ingle has an ownership interest and is employed by Renee & Co., which performs consulting services to the Company. Suggest connecting with Director Ingle on this disclosure.

Director Tompkins has an ownership interest in and is employed by Strae Advisory Services, LLC (“**Strae**”), which performs consulting services to the Company. He has a minority ownership interest in the Company but is not a creditor, officer or director of the Company.

Director Lee has an ownership interest in and is employed by Strae, which performs consulting services to the Company. She personally is not an owner, creditor, officer or director of the Company.

Director Berger has a minority ownership interest in and is employed by Matrix Design Group, Inc., which performs engineering and construction consulting services to the Company. He is not an owner, creditor, officer or director of the Company.

Each director present stated that their participation in the meeting was necessary to obtain a quorum of the Board or otherwise enable the Board to act; that written disclosures of such potential conflicts of interest had been filed with the Board and the Secretary of State in accordance with statutory requirements; and that the nature of their private interests related to their respective employment, officership, ownership or consultant relationships with the Company. After each Director had summarily stated for the record the fact and nature of such private interests and had further stated that the determination to participate in voting or take any other action on any contract or other matter in which he or she may have a private interest would be made in compliance with Section 24-18-201(1)(b)(V), C.R.S., on an ad hoc basis, the Board turned their attention to the agenda items.

All disclosures of potential conflict of interest statements previously filed are deemed continuing for all purposes and are incorporated into the record of the meeting.

APPROVAL OF
AGENDA

Following discussion and upon motion duly made, seconded and unanimously carried, the Board approved the agenda as presented.

MINUTES

The Board reviewed the Minutes of the March 1, 2022 coordinated special meeting minutes. Upon motion duly made, seconded and unanimously carried, the Minutes of the March 1, 2022 coordinated meeting were approved as presented.

FINANCIAL REPORT

Mr. Carroll of CliftonLarsonAllen (“CLA”) discussed his firm and their handling of the Districts’ financial matters and noted that CLA will provide unaudited financials on a regular basis moving forward.

Mr. Carroll then presented the Districts’ property tax reconciliation, schedule of cash position and check list. Upon motion duly made, seconded and unanimously carried, the Boards of each District ratified approval of the financials as presented.

DURA UPDATE

President Tompkins provided an update on discussions with DURA and noted that DURA has been non-responsive to numerous attempts to advance issuing Junior Subordinate Bond (‘JSB’) #2 under the DURA Redevelopment Agreement. President Tompkins and Director Lee spoke with DURA management, who stated that DURA’s position is that the I-25 and Broadway tax increment area has no further TIF capacity, and therefor DURA has no obligation to issue a JSB at this time. Ms. Huggins, Executive Director of DURA, stated to Directors Tompkins and Lee that she will meet with Craig Umbaugh, DURA’s legal counsel, to consider how to proceed. President Tompkins then noted his recommendation that the District provides formal written correspondence to DURA memorializing the Districts’ repeated requests for DURA engagement and consideration of JSB #2. Mr. Cockrel stated that he has reached out to Mr.

Umbaugh but has not received a response. After speaking with BSP representatives regarding availability of developer advances for future District projects, particularly concerns over DURA reimbursements, Mr. Cockrel suggested that President Tompkins, Director Lee and Mr. Mountain work together to strategize ways to resolve the current impasse, including a potential demand that terms of the Redevelopment Agreement be adhered to by DURA.

LEGAL REPORT

Mr. Cockrel presented the memorandum from Matrix Design and BAM regarding the adequacy of the construction timelines for completion of the South Pedestrian Bridge. It is the opinion of Matrix and BAM that the District's risk that damages will occur under the GID Infrastructure Agreement due to the contractor's failure to complete the South Pedestrian Bridge in a timely manner is minimal. Director Berger noted that Matrix is confident that the infrastructure will be done in time. He stated that once all infrastructure is in place, the City will issue Certificates of Occupancy. Director Berger advised that construction of the infrastructure is well under way and Matrix anticipates this work will be complete by this summer. To note, the GID Infrastructure Agreement was unanimously approved at the March 1, 2022 meeting.

Mr. Cockrel then explained to the Board that the basic terms of the Intergovernmental Agreement for O&M for Kentucky Avenue Bridge Improvements between District No. 1 and the City have been worked out. Originally, to ensure there would be no interference with traffic on the bridge, the City required that permits be obtained for maintenance of sidewalks, i.e., shoveling snow, trash clean up and general landscaping. After discussion, the City has lessened its specifications and now is requiring that the District obtain permits if auto traffic will be affected or longer-term interference with pedestrian uses will occur and that the District may obtain seasonal permits for normal operating activities like snowplowing, trash pickup, etc.

Mr. Cockrel then provided an update on the new directors' parcels. Mr. Silberstein is currently working on the execution of updated Contracts to Purchase for directors to align with the change in director parcels' legal descriptions. Once this process is complete, the next step will be to work on the exclusion of Tract J from District Nos. 2 and 3.

CONSTRUCTION
STATUS UPDATE

Director Berger provided the Board with an update on the status of construction noting that the infrastructure work continues in Filing 3. He is working with Jeff Steinberg and Mr. Cockrel on temporary construction easements for the fifth lane project on Platte River Drive. Director Berger will also work with Kraemer on cap pricing for the South Ped Bridge; this should be completed soon so construction can start in late May pending City approval of an Extended Report. He will process a change order for the final cap price for Board approval before work commences. Director Berger noted that he is also working on a contract for Phase 1 landscaping work in Filing 3, which will be presented to the Board subsequently. The Phase 1 landscaping package is out to bid, and the deadline for responses is the first week of April. He will review all responses and report back to the Board.

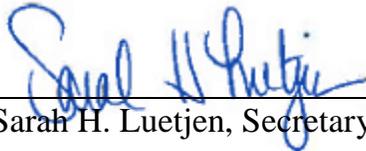
OTHER BUSINESS

None.

MEETING ADJOURNED

There being no other matters to come before the Board, the meeting was adjourned.

Respectfully submitted,



Sarah H. Luetjen, Secretary for the Meeting

APPROVED

Mark Tompkins

Tom Berger

Elizabeth Lee

Lisa Ingle

**ORDER BY BOARD OF DIRECTORS OF THE
BROADWAY STATION METROPOLITAN DISTRICT NO. 1
FOR EXCLUSION OF REAL PROPERTY**

WHEREAS, there was filed with the Board of Directors of the Broadway Station Metropolitan District No. 1 (the “District”) a duly acknowledged Petition, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, signed on behalf of BSP East, LLC, one hundred percent (100%) of the fee owners of the real property described in the Petition, requesting that the Board of Directors exclude such property from the District; and

WHEREAS, such Petition was heard at a public meeting of the Board of Directors of the District on June 27, 2022, at the hour of 1:00 p.m. via Zoom: <https://us02web.zoom.us/j/87484098763>; Webinar ID: 874 8409 8763, after publication of notice of the filing of such Petition, the place, time and date of such meeting, the name and address of the Petitioner, and a general description of the property to be excluded, in the *Daily Journal* on June 24, 2022, a copy of which proof of publication is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, no written objection to the exclusion was filed by any person; and

WHEREAS, the Board of Directors, having reviewed such Petition and all relevant information related thereto, hereby determines that:

A. The exclusion of such property will be in the best interests of all of the following: (i) the property itself; (ii) the District; and (iii) the county in which the District is located;

B. The relative costs and benefits to such property justify exclusion from the District’s services;

C. The ability of the District to provide economical and sufficient service to both the property to be excluded and all of the properties within the District’s boundaries will not be adversely affected;

D. The District will be able to provide services at a reasonable cost, but the costs that would be imposed by other entities in the surrounding area to provide similar services are also reasonable;

E. There will be no effect from either granting or denying the Petition on employment and other economic conditions in the District and surrounding area;

F. There will be no economic impact on the region, District, surrounding area, or State as a whole if the Petition is granted or denied;

G. There are economically feasible alternative services available from other entities in the surrounding area;

H. The additional cost to be levied on other property within the District as a consequence of the exclusion is nominal; and

I. The District currently has outstanding bonded indebtedness for which such properties are and will remain liable as follows:

_____ ; and

WHEREAS, it is deemed to be in the best interest of the District and the Petitioner that such property be excluded from the District.

IT IS THEREFORE ORDERED that such Petition be granted as to the real property described herein, subject to the continuing obligation of such property to retire its proportionate share of all outstanding bonded indebtedness of the District and interest thereon existing immediately prior to the effective date of the Court's Order of Exclusion, pursuant to the provisions of Section 32-1-503(1), C.R.S.; and that the boundaries of the District shall be altered by the exclusion of the real property described herein; and that the District Court of City and County of Denver, Colorado, in which Court an Order was entered establishing this District, be requested to enter an Order that such real property be excluded from the District.

I certify that the foregoing Order was unanimously passed at a meeting of the Board of Directors of the Broadway Station Metropolitan District No. 1, duly called and held on June 27, 2022, at the hour of 1:00 p.m., and that the undersigned is the duly acting and authorized Chairman of the District.

BROADWAY STATION
METROPOLITAN DISTRICT NO. 1

By: _____
Chairman

ATTEST:

Secretary

EXHIBIT A TO BOARD ORDER OF EXCLUSION
(Petition for Exclusion)

PETITION FOR EXCLUSION OF LAND

IN THE MATTER OF BROADWAY STATION METROPOLITAN DISTRICT NO. 1

TO THE BOARD OF DIRECTORS OF THE DISTRICT:

The undersigned Petitioner, being the fee owner of one hundred percent (100%) of the real property hereinafter described (“Property”), hereby prays that such Property be excluded from the Broadway Station Metropolitan District No. 1, as provided by law, and for cause, states that:

1. Assent to the exclusion of such Property from the District is hereby given by the undersigned, who is the fee owner of such Property.
2. Petitioner understands that there shall be no withdrawal from this Petition after publication of notice by the Board, without the consent of the Board.
3. The exclusion of such Property from the District shall be subject to any statutory condition of exclusion, as well as all terms and conditions established by the Board and accepted by Petitioner.
4. This Petition is accompanied by a deposit of \$ _____, to be applied toward all costs of the exclusion proceedings, as required by statute.
5. The Property is accurately described as follows:

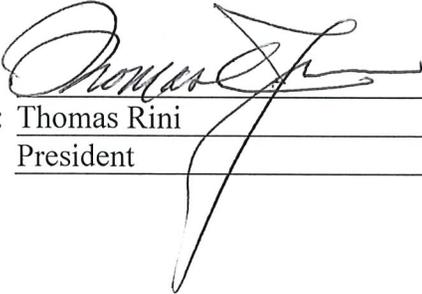
See Exhibit A attached hereto and incorporated herein by this reference.
6. It is in the best interests of the Property that the Property be excluded from the District.
7. It is in the best interests of the District that the Property be excluded from the District.
8. It is in the best interests of the county or counties within which the District is located that the Property be excluded from the District.
9. The relative costs and benefits to the Property justify the exclusion.
10. The District will still be able to provide economical and sufficient service to all of the properties within the District's boundaries following exclusion of the Property.
11. The District is able to provide services at a reasonable cost, but that there are other special districts in the area of the Property which can provide similar services at a reasonable cost.

PETITIONER:

BSP East, LLC, a Delaware limited liability company

By: Broadway Station Partners, LLC,
a Delaware limited liability company,
its Sole Member

By: Broadway Asset Management, LLC,
an Ohio limited liability company,
its Managing Member

By: 
Name: Thomas Rini
Title: President

STATE OF OHIO)
)
COUNTY OF Cuyahoga) ss.

The foregoing instrument was acknowledged before me this 19 day of May, 2022 by Thomas Rini as President of Broadway Asset Management, LLC, an Ohio limited liability company, Managing Member of Broadway Station Partners, LLC, a Delaware limited liability company, Sole Member of BSP East, LLC, a Delaware limited liability company, on behalf of the company.

Witness my hand and official seal.

My commission expires: March 28, 2023



VICTORIA AMOROSO
Notary Public, State of Ohio
My Commission Expires
March 28, 2023
COMMISSION: 2018-RE-713613


Notary Public

EXHIBIT A

(Legal Description of Property to be Excluded)

Parcel 1 (District No. 1)

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER SOUTH 1/16 CORNER OF SAID SECTION 15, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 15 BEARS S00°44'36"E, 1323.71 FEET; THENCE S00°44'36"E, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER, A DISTANCE OF 29.92 FEET; THENCE N89°57'09"W, A DISTANCE OF 50.00 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF SOUTH BROADWAY, SAID POINT BEING THE NORTHEAST CORNER OF LOT 1, BLOCK 1, FIRST ADDITION TO EDGERTON PLACE; THENCE S00°44'36"1 ALONG SAID WEST RIGHT OF WAY AND THE EAST LINE OF SAID LOT 1 AND THE EAST LINE OF BLOCK 1, EDGERTON PLACE, A DISTANCE OF 58.08 FEET; THENCE N89°57'09"W, DEPARTING SAID LINES, A DISTANCE OF 125.00 FEET; THENCE N00°44'36"W, A DISTANCE OF 58.08 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE S89°57'09"E, ALONG THE NORTH LINE OF SAID LOT 1, BLOCK 1, FIRST ADDITION TO EDGERTON PLACE, A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 7259 SQUARE FEET OR 0.167 ACRES, MORE OR LESS. BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN WAS FOUND TO BEAR S00°44'36"E, BY A REAL TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) SURVEY PERFORMED BY ZYLSTRA BAKER SURVEYING, INC. IN FEBRUARY, 2002.

NOW A PORTION OF LOT 1, BLOCK 2, BROADWAY STATION FILING NO. 1.

EXHIBIT B TO BOARD ORDER OF EXCLUSION
(Proof of Publication)

**ORDER BY BOARD OF DIRECTORS OF THE
BROADWAY STATION METROPOLITAN DISTRICT NO. 3
FOR EXCLUSION OF REAL PROPERTY**

WHEREAS, there was filed with the Board of Directors of the Broadway Station Metropolitan District No. 3 (the “District”) a duly acknowledged Petition, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, signed on behalf of BSP East, LLC, one hundred percent (100%) of the fee owners of the real property described in the Petition, requesting that the Board of Directors exclude such property from the District; and

WHEREAS, such Petition was heard at a public meeting of the Board of Directors of the District on June 27, 2022, at the hour of 1:00 p.m. via Zoom: <https://us02web.zoom.us/j/87484098763>; Webinar ID: 874 8409 8763, after publication of notice of the filing of such Petition, the place, time and date of such meeting, the name and address of the Petitioner, and a general description of the property to be excluded, in the *Daily Journal* on June 24, 2022, a copy of which proof of publication is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, no written objection to the exclusion was filed by any person; and

WHEREAS, the Board of Directors, having reviewed such Petition and all relevant information related thereto, hereby determines that:

A. The exclusion of such property will be in the best interests of all of the following: (i) the property itself; (ii) the District; and (iii) the county in which the District is located;

B. The relative costs and benefits to such property justify exclusion from the District’s services;

C. The ability of the District to provide economical and sufficient service to both the property to be excluded and all of the properties within the District’s boundaries will not be adversely affected;

D. The District will be able to provide services at a reasonable cost, but the costs that would be imposed by other entities in the surrounding area to provide similar services are also reasonable;

E. There will be no effect from either granting or denying the Petition on employment and other economic conditions in the District and surrounding area;

F. There will be no economic impact on the region, District, surrounding area, or State as a whole if the Petition is granted or denied;

G. There are economically feasible alternative services available from other entities in the surrounding area;

H. The additional cost to be levied on other property within the District as a consequence of the exclusion is nominal; and

I. The District currently has outstanding bonded indebtedness for which such properties are and will remain liable as follows:

_____ ; and

WHEREAS, it is deemed to be in the best interest of the District and the Petitioner that such property be excluded from the District.

IT IS THEREFORE ORDERED that such Petition be granted as to the real property described herein, subject to the continuing obligation of such property to retire its proportionate share of all outstanding bonded indebtedness of the District and interest thereon existing immediately prior to the effective date of the Court's Order of Exclusion, pursuant to the provisions of Section 32-1-503(1), C.R.S.; and that the boundaries of the District shall be altered by the exclusion of the real property described herein; and that the District Court of City and County of Denver, Colorado, in which Court an Order was entered establishing this District, be requested to enter an Order that such real property be excluded from the District.

I certify that the foregoing Order was unanimously passed at a meeting of the Board of Directors of the Broadway Station Metropolitan District No. 3, duly called and held on June 27, 2022, at the hour of 1:00 p.m., and that the undersigned is the duly acting and authorized Chairman of the District.

BROADWAY STATION
METROPOLITAN DISTRICT NO. 3

By: _____
Chairman

ATTEST:

Secretary

EXHIBIT A TO BOARD ORDER OF EXCLUSION
(Petition for Exclusion)

PETITION FOR EXCLUSION OF LAND

IN THE MATTER OF BROADWAY STATION METROPOLITAN DISTRICT NO. 3

TO THE BOARD OF DIRECTORS OF THE DISTRICT:

The undersigned Petitioner, being the fee owner of one hundred percent (100%) of the real property hereinafter described (“Property”), hereby prays that such Property be excluded from the Broadway Station Metropolitan District No. 3, as provided by law, and for cause, states that:

1. Assent to the exclusion of such Property from the District is hereby given by the undersigned, who is the fee owner of such Property.
2. Petitioner understands that there shall be no withdrawal from this Petition after publication of notice by the Board, without the consent of the Board.
3. The exclusion of such Property from the District shall be subject to any statutory condition of exclusion, as well as all terms and conditions established by the Board and accepted by Petitioner.
4. This Petition is accompanied by a deposit of \$ _____, to be applied toward all costs of the exclusion proceedings, as required by statute.
5. The Property is accurately described as follows:

See Exhibit A attached hereto and incorporated herein by this reference.
6. It is in the best interests of the Property that the Property be excluded from the District.
7. It is in the best interests of the District that the Property be excluded from the District.
8. It is in the best interests of the county or counties within which the District is located that the Property be excluded from the District.
9. The relative costs and benefits to the Property justify the exclusion.
10. The District will still be able to provide economical and sufficient service to all of the properties within the District's boundaries following exclusion of the Property.
11. The District is able to provide services at a reasonable cost, but that there are other special districts in the area of the Property which can provide similar services at a reasonable cost.

PETITIONER:

BSP East, LLC, a Delaware limited liability company

By: Broadway Station Partners, LLC,
a Delaware limited liability company,
its Sole Member

By: Broadway Asset Management, LLC,
an Ohio limited liability company,
its Managing Member

By: *Thomas Rini*
Name: Thomas Rini
Title: President

STATE OF OHIO)
)
COUNTY OF Cuyahoga) ss.

The foregoing instrument was acknowledged before me this 19 day of May, 2022 by Thomas Rini as President of Broadway Asset Management, LLC, an Ohio limited liability company, Managing Member of Broadway Station Partners, LLC, a Delaware limited liability company, Sole Member of BSP East, LLC, a Delaware limited liability company, on behalf of the company.

Witness my hand and official seal.

My commission expires: March 28, 2023

Victoria Amoroso
Notary Public



VICTORIA AMOROSO
Notary Public, State of Ohio
My Commission Expires
March 28, 2023
COMMISSION: 2018-RE-713613

EXHIBIT A

(Legal Description of Property to be Excluded)

Parcel 3 (District No. 3)

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER SOUTH 1/16 CORNER OF SAID SECTION 15, FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 15 BEARS S00°44'36"E, 1323.71 FEET; THENCE S00°44'36"E, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER, A DISTANCE OF 146.09 FEET; THENCE N89°57'09"W, A DISTANCE OF 50.00 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF SOUTH BROADWAY; THENCE S00°44'36"E, ALONG SAID WEST RIGHT OF WAY AND THE EAST LINE OF BLOCK I, EDGERTON PLACE, A DISTANCE OF 58.08 FEET; THENCE N89°57'09"W, DEPARTING SAID LINES, A DISTANCE OF 125.00 FEET; THENCE N00°44'36"W, A DISTANCE OF 58.08 FEET; THENCE S89°57'09"E, A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 7259 SQUARE FEET OR 0.167 ACRES, MORE OR LESS.

BASIS OF BEARINGS: THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN WAS FOUND TO BEAR S00°44'36" E, BY A REAL TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) SURVEY PERFORMED BY ZYLSTRA BAKER SURVEYING, INC. IN FEBRUARY, 2002.

NOW A PORTION OF LOT 1, BLOCK 2, BROADWAY STATION FILING NO. 1.

EXHIBIT B TO BOARD ORDER OF EXCLUSION
(Proof of Publication)

PURCHASE AND SALE AGREEMENT

(BSP West)

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made as of the ___ day of _____ 2022, by and between **Broadway Station Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (“**Buyer**”), and **BSP West, LLC**, a Colorado limited liability company (“**Seller**”).

RECITALS

A. Seller owns the Property (as defined below in Section 1.1), also known as _____ South Platte River Drive, Denver, Colorado 80223, which is a portion of that certain parcel of land as described in and recorded on _____ at Reception No. _____ of the records of the Clerk and Recorder of the City and County of Denver, Colorado (the “**City**”). The Property is generally located adjacent to South Platte River Drive to the north of West Mississippi Avenue.

B. Buyer is a Colorado special district organized and operating pursuant to C.R.S. 32-1-101 et seq., and has the power to acquire real and personal property.

C. Buyer desires to purchase the Property from Seller in order to make certain improvements to South Platte River Drive north of the intersection of West Mississippi Avenue and South Platte River Drive and to enlarge the right-of-way of South Platte River Drive in the vicinity of the Property, as generally depicted in **Exhibit A** attached to this Agreement and incorporated herein (generally, the “**Project**”).

D. In order to complete the Project and prior to closing this transaction, Buyer will need to complete preliminary design and engineering plans of such roadway improvements, obtain certain approvals from the City and the Colorado Department of Transportation (“**CDOT**” and together with the City, the “**Agencies**”), as discussed in more detail below.

E. Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the foregoing premises in the Recitals, which are incorporated herein by this reference, and of the promises, covenants and agreements of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, Seller and Buyer do hereby promise and agree as follows:

ARTICLE I PURCHASE AND SALE

Section 1.1 **Agreement of Purchase and Sale.** Subject to the terms and conditions hereinafter set forth, Seller agrees to sell, warrant and convey to Buyer, and Buyer agrees to purchase from Seller, the Property more specifically described in **Exhibit B** attached to this Agreement and incorporated herein, which contains approximately two thousand four hundred five (2,420) total square feet, together with all rights and appurtenances pertaining to such Property, including without limitation any right, title and interest of Seller, if any, in and to all assignable governmental permits, licenses, certificates, approvals and authorizations relating to the use, occupancy or operation of such Property (collectively, the “**Property**”). As set forth in Section 2.1(b), Buyer shall obtain a current survey of the Property (the “**Survey**”). After Buyer has obtained the Survey, Buyer shall provide Seller with a proposed metes and bounds legal description of the Property based on such Survey. Upon Seller’s written consent to such metes and bounds legal description, which may not be unreasonably withheld, conditioned or delayed, Buyer will proceed to obtain the Agencies’ approval of the preliminary design and engineering of such roadway improvements so that Seller may complete the Project. If the Agencies’ approval of the survey results in any change in the legal description, the revised legal description shall be substituted for the legal description attached as **Exhibit B** to this Agreement, and such revised legal description will be the legal description of the Property for all purposes under this Agreement, including without limitation the legal description used for the applicable portion of the Property on the “Deed” (as defined below in Section 4.2(a)), and the “Purchase Price” (as defined below in Section 1.3) shall be adjusted accordingly.

Section 1.2 **Effective Date.** This Agreement shall become effective on the date set forth above in the preamble (the “**Effective Date**”) following execution of this Agreement by each party.

Section 1.3 **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) shall be payable in full at the Closing (as defined below in Section 4.1(a)) at the price of \$50.00 per square foot for the total square footage as set forth in the Survey (currently estimated to be \$121,000.00); provided, however, that no cash payment shall be made to Seller other than the release of the Deposit, and the balance of the Purchase Price shall be deemed to be a “Developer Advance” made pursuant to that certain Reimbursement Agreement for Public Infrastructure Funding dated October 1, 2017, as amended from time to time (the “**Reimbursement Agreement**”) made and entered into between Seller and Buyer, shall be added to any amounts reimbursable thereunder, and shall be repaid to Seller in accordance with the terms of the Reimbursement Agreement.

Section 1.4 **Deposit.** As an inducement to Seller to enter into this Agreement, Buyer, within three (3) days after the Effective Date, shall deposit with Land Title

Guarantee Company (the “**Title Company**”) the amount of \$2,500.00, as an earnest money deposit, which shall be held by the Title Company in an interest-bearing account (the “**Deposit**”). At the Closing, the Deposit shall be applied as a credit against the Purchase Price. The Deposit shall be fully refundable to Buyer on its sole instructions to the Title Company if (i) Buyer terminates this Agreement, in its sole and absolute discretion, pursuant to Section 3.2 of this Agreement, (ii) in the event of the failure of Buyer to close the transaction contemplated by this Agreement based on a failure of a condition precedent to Buyer’s obligations under Section 4.6, or (iii) a Seller default as set forth in Section 6.2. Except as otherwise provided in this Agreement, in all other cases, the Deposit shall be non-refundable and the sole property of Seller. Seller and Buyer have bargained for the terms of the refund of the Deposit and the delivery of the Deposit to Seller under the terms provided in this Agreement, and hereby acknowledge and agree that the same are fair and reasonable under the circumstances existing as of the date of this Agreement and are supported by independent consideration given individual weight by the parties.

Section 1.5 **Deposit as Liquidated Damages.** From and after the expiration of the “Due Diligence Period” (as defined below in Section 3.1(c)), in the event the Closing is not consummated by reason of Buyer’s default hereunder, the Deposit shall be paid to and retained by Seller as liquidated damages. THE PARTIES ACKNOWLEDGE THAT SELLER’S ACTUAL DAMAGES IN THE EVENT THAT THE SALE IS NOT CONSUMMATED BY REASON OF BUYER’S DEFAULT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THE PARTIES ACKNOWLEDGE THAT THE NONREFUNDABLE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES’ REASONABLE ESTIMATE OF SELLER’S DAMAGES AND AS SELLER’S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT CLOSING DOES NOT OCCUR BY REASON OF BUYER’S DEFAULT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THIS SECTION 1.4 LIMIT THE DAMAGES RECOVERABLE BY EITHER PARTY AGAINST THE OTHER PARTY DUE TO (A) THE OTHER PARTY’S OBLIGATION TO INDEMNIFY SUCH PARTY IN ACCORDANCE WITH THIS AGREEMENT, (B) CLAIMS MADE FOR BREACHES BY EITHER PARTY AFTER CLOSING, OR (C) THIRD PARTY CLAIMS. BUYER AND SELLER ACKNOWLEDGE THAT THEY HAVE EACH READ AND UNDERSTOOD THE ABOVE PROVISION COVERING LIQUIDATED DAMAGES, AND THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT WAS EXECUTED.

Section 1.6 **Escrow Agency.** Title Company shall hold and dispose of the Deposit in accordance with the terms of this Agreement and, to the extent not conflicting herewith, the terms of Title Company’s standard escrow agreement. Seller and Buyer agree that the duties of the Title Company hereunder are purely ministerial in nature and

shall be expressly limited to the safekeeping and disposition of the Deposit in accordance with this Agreement. Title Company shall incur no liability in connection with the safekeeping or disposition of the Deposit for any reason other than Title Company's willful misconduct or gross negligence. In the event that Title Company shall be in doubt as to its duties or obligations with regard to the Deposit, or in the event that Title Company receives conflicting instructions from Buyer and Seller with respect to the Deposit, Title Company shall not be required to disburse the Deposit and may, at its option, continue to hold the Deposit until both Buyer and Seller agree as to its disposition, or until a final judgment is entered by a court of competent jurisdiction directing its disposition, or Title Company may interplead the Deposit in accordance with the laws of the State of Colorado. Title Company shall execute this Agreement solely for the purpose of being bound by the provisions of Section 1.3, Section 1.4 and Section 1.5 hereof.

ARTICLE II TITLE AND SURVEY

Section 2.1 Title Commitment and Survey.

(a) Within fifteen (15) days after the Effective Date, Seller shall provide to Buyer, at Buyer's expense, a current owner's ALTA title commitment covering the Property (the "**Commitment**"), issued by the Title Company, with the Commitment to insure, subject to the requirements and exceptions set forth therein, title to the Property in Buyer's name for \$121,000.00. Seller shall cause the Title Company to deliver to Buyer legible copies of all recorded instruments referred to in the Commitment (collectively, the "**Title Documents**") and to furnish to Buyer a tax certificate from the City confirming the payment of all real estate taxes on the Property that are due and owing.

(b) Buyer shall obtain the Survey, at Buyer's expense.

Section 2.2 Title Examination. Buyer shall notify Seller in writing (a "**Title Notice**"), at least ten (10) days prior to expiration of its Due Diligence Period (as defined below in Section 3.1), which exceptions to title or requirements set forth therein, if any, will not be accepted by Buyer. If Buyer fails to notify Seller in writing of its disapproval of any exceptions to title within such period, Buyer shall be deemed to have approved the condition of title to the Property. If Buyer notifies Seller in writing that Buyer objects to any exceptions to title, Seller shall have five (5) days after receipt of the Title Notice to notify Buyer (a) that Seller will remove such objectionable exceptions from title on or before the Closing; or (b) that Seller elects not to cause such exceptions to be removed. If Seller gives Buyer notice under clause (b) above, Buyer may either terminate this Agreement prior to the expiration of the Due Diligence Period under Section 3.2, or proceed with the Closing and take title to the Property subject to such exception.

Section 2.3 **Pre-Closing “Gap” Title Defects.** Buyer may, at or prior to a Closing, notify Seller in writing (a “**Gap Notice**”) of any exceptions to title raised by the Title Company between the expiration of the period for Buyer to object to title exceptions set forth in Section 2.2 above and the Closing, which objections were not disclosed by the Title Company or otherwise known to Buyer prior to the expiration of the Due Diligence Period; provided, however, that Buyer must notify Seller of such objection to title no later than five (5) days after being made aware of the existence of such exception, or the “Closing Date” (as defined in Section 4.1(a) below) for the Property, whichever is earlier. If Buyer sends a Gap Notice to Seller, Seller shall have five (5) days after receipt of the Gap Notice to notify Buyer (a) that Seller will remove such objectionable exceptions from title on or before the applicable Closing, or (b) that Seller elects not to cause such exceptions to be removed. If Seller gives Buyer notice under clause (b) above, Buyer may either terminate this Agreement within five (5) days after receipt of Seller’s notice to Buyer or proceed with the Closing and take title to the Property subject to such exception. If the above procedure for a Gap Notice extends beyond the Closing Date, such Closing Date shall be extended to a date that is three (3) days after the expiration date of such cure period, if Seller elects to cure, or three (3) days after the expiration date of Buyer’s right to terminate the Agreement, if Buyer proceeds with the Closing after Seller elects not to cure.

Section 2.4 **Permitted Exceptions.**

(a) The Property shall be conveyed subject to the following matters, which are hereinafter referred to as the “**Permitted Exceptions**”:

(i) those matters shown on the Commitment that either are not objected to in writing within the time periods provided in Section 2.2 or Section 2.3 hereof, or if objected to in writing by Buyer, those exceptions which Seller has elected not to remove or cure or has been unable to remove or cure, provided that Buyer has elected to take title subject to these exceptions;

(ii) the lien of all ad valorem real estate taxes and assessments not yet due and payable as of the Closing Date, subject to adjustment as herein provided; and

(iii) items shown on the Survey and not objected to by Buyer or waived by Buyer.

(b) Notwithstanding the foregoing provisions of this Section 2.4, the Permitted Exceptions shall not include (i) any delinquent taxes or assessments, (ii) any deed of trust, mortgage or other lien or monetary encumbrance affecting the Property or any part thereof, including without limitation any mechanics’ liens, or (iii) any lien, encumbrance or other matter affecting title to the Property that was created or consented

to by Seller, its contractors or subcontractors after the Effective Date, all of which shall be paid and discharged by Seller for the Property at or prior to the Closing.

Section 2.5 **Conveyance of Title.** At Closing, Seller shall convey and transfer to Buyer fee simple title to the Property by execution and delivery of the Deed. Evidence of delivery of such title shall be the issuance by the Title Company of an ALTA extended coverage (i.e., deleting the standard printed exceptions) Owner's Policy of Title Insurance (the "**Title Policy**") covering the Property in the full amount of the Purchase Price, subject only to the Permitted Exceptions. The exception for liens arising against the Property for work or materials ordered by or contracted for by Seller must be deleted from the Title Policy. Buyer shall have the right to require additional endorsements to the Title Policy if Buyer deems such endorsements reasonably necessary for its protection and/or the transfer of the Property to the City or CDOT for any part of the road right-of-way.

ARTICLE III REVIEW OF PROPERTY

Section 3.1 **Due Diligence Period.**

(a) Within five (5) days after the Effective Date, Seller shall provide to Buyer originals or legible copies of all documents affecting the Property that are within its possession or control (collectively, the "**Property Documents**"), including without limitation the following documents:

(i) existing surveys and prior title policies, if any;

(ii) easements, licenses, contracts or permits affecting the Property, if any; and

(iii) copies of soil, environmental, engineering or other studies made with regard to the Property, if any.

(b) To the extent not listed above, Seller shall deliver to Buyer any documents and materials relating to the Property requested by Buyer from time to time that are in Seller's possession or control.

(c) Seller agrees to provide Buyer with updates of or additions to any Property Documents throughout the Due Diligence Period.

(d) During the period beginning upon the Effective Date and ending on the date which is thirty (30) days after the Effective Date, provided, however, that Buyer, in its sole and absolute discretion, may extend such period for an additional thirty (30) days by giving notice to Seller (such period being herein referred to as the "**Due Diligence Period**"), Buyer shall have the right to investigate the Property and its

surrounding location and any and all matters Buyer deems relevant to the acquisition, development, usage, operation or transfer of the Property to the City or CDOT. Such right of investigation shall include, without limitation, the right to inspect the environmental condition and zoning of the Property and the right to have made, at Buyer's expense, any studies or inspections of the Property as Buyer and the Agencies may deem necessary or appropriate. Seller agrees to cooperate reasonably with any such investigations, inspections or studies made by or at Buyer's direction.

(e) Buyer understands and agrees that any on-site inspections of the Property shall occur at reasonable times agreed upon by Seller and Buyer after reasonable prior notice to Seller and shall be conducted so as not to interfere unreasonably with the commercial use of the Property by Seller. Seller reserves the right to have a representative present during any such inspections. If Buyer desires to do any invasive testing at the Property, Buyer shall do so only after notifying Seller and obtaining Seller's prior written consent thereto, which consent may not be unreasonably withheld, conditioned or delayed. Buyer shall promptly restore the Property to its condition prior to any such inspections or tests, at Buyer's expense. Buyer agrees to protect, indemnify, defend and hold Seller harmless from and against any claim for liabilities, losses, costs, expenses (including reasonable attorneys' fees), damages or injuries arising out of or resulting from the inspection of the Property by Buyer or its employees, agents or contractors, and notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold harmless Seller shall survive the Closing or any termination of this Agreement; provided, however, that this indemnity shall not extend to and in no event shall Buyer be liable to Seller for (i) any release of preexisting hazardous substances arising from the conduct of any investigation or testing of the Property or for any diminution in the market value of the Property resulting from the information disclosed by any such investigation or test, (ii) for any negligence or misconduct of Seller or any employee, agent or contractor of Seller, or (iii) any pre-existing conditions on or about the Property, and shall be subject to and limited by all terms, limitations, defenses, immunities and other protections afforded to Buyer under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq. (the "CGIA").

(f) As part of Buyer's investigation under this Section 3.1, Buyer may obtain, at Buyer's expense and in its discretion, a Phase I environmental study of the Property or an update to any existing Phase I environmental study of the Property provided to Buyer by Seller pursuant to Section 3.1(a).

Section 3.2 **Right of Termination.** Prior to expiration of the Due Diligence Period, Buyer may terminate this Agreement in its sole and absolute discretion. In furtherance thereof, prior to the expiration of the Due Diligence Period, Buyer shall deliver to Seller a letter either (a) setting forth that it is electing to waive its right to terminate the Agreement pursuant to this Section 3.2, and will proceed with the Closing; or (b) setting forth that it is terminating the Agreement pursuant to this Section 3.2,

whereupon this Agreement shall terminate and neither party shall have any further rights or obligations hereunder (except for those obligations which expressly survive the termination of this Agreement), the Deposit shall be returned to Buyer, and each party shall bear its own costs incurred hereunder. In the event Buyer fails to terminate this Agreement prior to the expiration of the Due Diligence Period, Buyer's right to terminate this Agreement pursuant to this Section 3.2 shall be deemed waived, and this Agreement shall continue and remain in full force and effect.

ARTICLE IV CLOSING

Section 4.1 Establishment of Closing Date; Closing.

(a) The Property shall, if this Agreement is not terminated in accordance with the terms hereof, be conveyed to Buyer at a closing date to be set by the parties on or before December 15, 2021 (the "**Closing**" and also referenced as the "**Closing Date**"), which Closing shall be subject to satisfaction of the Development Conditions set forth in Section 4.6.

(b) At the Closing, Seller and Buyer shall perform their respective obligations set forth in Section 4.2 and Section 4.3 hereof, the performance of which obligations shall be concurrent conditions of such Closing. The Closing shall be consummated through an escrow administered by the Title Company, and all documents shall be deposited with the Title Company as escrow agent.

(c) Seller and Buyer shall provide Title Company with written instructions consistent with the terms of this Agreement for the Closing. If any requirements relating to the duties or obligations of Title Company hereunder are not acceptable to Title Company, or if Title Company requires additional instructions, the parties agree to make such deletions, substitutions and additions thereto as Buyer and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement.

Section 4.2 Seller's Obligations at Closing. At Closing, Seller shall:

(a) deliver to Buyer a duly executed special warranty deed (the "**Deed**") in the form attached hereto as **Exhibit C** conveying title to the Property, subject only to the Permitted Exceptions;

(b) deliver to Buyer possession and occupancy of the Property, subject only to the Permitted Exceptions;

(c) in the event that any representation or warranty of Seller needs to be modified due to changes since the Effective Date, deliver to Buyer a certificate, dated as of the Closing Date and executed on behalf of Seller by a duly authorized officer thereof,

identifying any representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Seller be liable to Buyer for, or be deemed to be in default hereunder by reason of, any breach of representation or warranty which results from any change that (i) occurs between the Effective Date and the applicable Closing Date and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Seller to prevent; provided, however, that the occurrence of a change which is not permitted hereunder or is not beyond the reasonable control of Seller to prevent shall, if materially adverse to Buyer, constitute the non-fulfillment of the condition set forth in Section 4.6 hereof and a default by Seller. In the event the Closing occurs despite such changes, Seller's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate;

(d) deliver to Buyer a certificate stating that Seller is not a "foreign person" as defined in the Federal Foreign Investment in Property Tax Act of 1986, the 1984 Tax Reform Act, as amended, and Section 1455 of the Internal Revenue Code of 1986, and any applicable regulations;

(e) execute a closing statement acceptable to Seller;

(f) deliver such additional documents as shall be reasonably required by Title Company to consummate the transaction contemplated by this Agreement, including without limitation the execution and delivery of the Title Company's standard form mechanic's lien affidavit to provide for the deletion from the Title Policy of the exception for liens arising against the Property for work or materials ordered by or contracted for by Seller, and such other affidavits as the Title Company may reasonably require of Seller to provide the contemplated title coverage to Buyer; and

(g) deliver to Buyer such evidence as Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller.

Section 4.3 **Buyer's Obligations at Closing.** At Closing, Buyer shall:

(a) in the event that any representation or warranty of Buyer set forth in Section 5.5 hereof needs to be modified due to changes since the Effective Date, deliver to Seller a certificate, dated as of the applicable Closing Date and executed on behalf of Buyer by a duly authorized representative thereof, identifying any such representation or warranty which is not, or no longer is, true and correct and explaining the state of facts giving rise to the change. In no event shall Buyer be liable to Seller for, or be deemed to be in default hereunder by reason of, any breach of representation or warranty set forth in Section 5.5 hereof which results from any change that (i) occurs between the Effective Date and the applicable Closing Date and (ii) is expressly permitted under the terms of this Agreement or is beyond the reasonable control of Buyer to prevent; provided,

however, that the occurrence of a change which is not permitted hereunder or is not beyond the reasonable control of Buyer to prevent shall, if materially adverse to Seller, constitute the non-fulfillment of the condition set forth in Section 4.7 hereof. In the event the applicable Closing occurs despite such changes, Buyer's representations and warranties set forth in this Agreement shall be deemed to have been modified by all statements made in such certificate;

- (b) execute a closing statement acceptable to Buyer;
- (c) deliver such additional documents as shall be reasonably required by Title Company to consummate the transaction contemplated by this Agreement;
- (d) deliver to Seller such evidence as Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Buyer; and
- (e) take appropriate measures to record the balance of the Purchase Price due at Closing as a "Developer Advance" under the Reimbursement Agreement.

Section 4.4 **Credits and Prorations.**

(a) At Closing, Buyer shall pay Seller's actual closing costs associated with such Closing (the "**Closing Fee**").

(b) At Closing, all income and expenses of the Property shall be apportioned as of 12:01 a.m., on the Closing Date, as if Buyer were vested with title to the Property during the entire day upon which the Closing occurs. Such prorated items shall include without limitation the following:

(i) taxes and assessments levied against the Property for the year of the Closing, if any, which proration shall be based upon taxes and assessments for the current calendar year or, if the amount of the current taxes and assessments cannot be determined, then based upon the most recent mill levy and most recent assessment valuation;

(ii) utility charges for which Seller is liable, if any, such charges to be apportioned at the Closing on the basis of the most recent meter reading occurring prior to the Closing or, if unmetered, on the basis of a current bill for each such utility; and

(iii) any other operating expenses or other items pertaining to the Property which are customarily prorated between a buyer and a seller in the City.

In general, Seller shall be entitled to all income and shall pay all expenses, relating to the ownership and operation of the Property for the period prior to the Closing Date, and Buyer shall be entitled to all income and shall pay all expenses relating to the ownership and operation of the Property, including without limitation all property taxes, assessments, utility charges, rates, operating service fees and other charges uniformly levied, assessed or imposed governmental entities (collectively the “**Expenses**”), for the period commencing on and after the Closing Date. For so long as Buyer owns the Property, Buyer shall pay all Expenses on and after the Closing Date. Seller and Buyer shall undertake, within sixty (60) days following the Closing, to adjust between themselves, as of the Closing Date, any income and expenses of the Property that are not adjusted on the settlement statement or that have been adjusted incorrectly.

(c) The provisions of this Section 4.4 shall survive the Closing.

Section 4.5 **Transaction and Closing Costs.**

(a) Seller and Buyer shall execute such returns, questionnaires and other documents as shall be required with regard to all applicable real property transaction taxes imposed by applicable federal, State or local laws or ordinances.

(b) Seller shall pay the fees of any counsel representing Seller in connection with the Closing and the transfer tax, if any, which becomes payable by reason of the transfer of the Property.

(c) Buyer shall pay the fees of any counsel representing Buyer in connection with the Closing, the balance of the Purchase Price, the premium for the Title Policy, any charges imposed by Title Company for the Closing services and escrow by the Title Company contemplated herein, the fees for recording the Deed and any other Closing Fees.

(d) All costs and expenses incident to this transaction and the Closing and not specifically described above shall be paid by the party incurring same.

(e) The provisions of this Section 4.5 shall survive the Closing.

Section 4.6 **Conditions Precedent to Obligation of Buyer.**

(a) The obligation of Buyer to consummate the transaction hereunder at Closing shall be subject to (a) approval of the Survey and Title Commitment by the Agencies and (b) approval of the preliminary design and engineering plans for the roadway improvements by the Agencies (collectively, the “**Development Conditions**”).

Buyer shall (i) provide Seller with written notice within five (5) days after the satisfaction of all of the Development Conditions and (ii) shall proceed to Closing within forty-five (45) days thereafter in accordance with Seller’s written directions. If the

Development Conditions are not satisfied by the date that is one (1) year from the Effective Date (the “**Development Conditions Expiration Date**”) and Seller has cooperated hereunder, then this Agreement shall automatically terminate (unless the Development Conditions Expiration Date is extended by mutual agreement of the parties or as otherwise set forth in the this Agreement), neither party shall have any further rights or obligations hereunder (except for those obligations which expressly survive the termination of this Agreement), the Deposit shall be returned to Buyer, and each party shall bear its own costs incurred hereunder. If any of the Development Conditions are not substantially satisfied by the Development Conditions Expiration Date because of Seller’s failure to cooperate hereunder, Buyer may: (A) extend the Development Conditions Expiration Date for six (6) months and provide Seller written notice of such extension and the steps it needs to take to cooperate, or (B) terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder (except for those obligations which expressly survive the termination of this Agreement), the Deposit shall be returned to Buyer, and each party shall bear its own costs incurred hereunder. If Buyer proceeds under (A) above and any of the Development Conditions are still not satisfied by the extended Development Conditions Expiration Date because of Seller’s failure to cooperate hereunder, then Buyer may, at its option, in its sole discretion, either: (i) pursue its remedy of specific performance to enforce the Seller’s obligations under this Agreement, or (ii) terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder (except for those obligations which expressly survive the termination of this Agreement), the Deposit shall be returned to Buyer, and each party shall bear its own costs incurred hereunder, and Buyer shall also recover from Seller an amount equal to Buyer’s out-of-pocket costs and expenses incurred in connection with this transaction, including without limitation the Buyer’s attorneys’ fees up to a maximum of \$7,500.00.

(b) As of the Closing Date, Seller shall have delivered to Buyer all of the items required to be delivered to Buyer pursuant to the terms of this Agreement, including without limitation those provided for in Section 4.2 hereof.

(c) As of the Closing Date, all of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects (with appropriate modifications permitted under this Agreement, which, if made, shall not constitute a default by Seller).

(d) As of the Closing Date, Seller shall have performed and observed, in all material respects, and is in full compliance with all covenants, agreements and terms of this Agreement which are to be performed and observed by Seller.

Section 4.7 **Conditions Precedent to Obligation of Seller.** The obligation and right of Seller to consummate the transaction hereunder at Closing shall be subject to the fulfillment of all of the following conditions, any or all of which may be waived by Seller in its sole and absolute discretion:

(a) As of the Closing Date, Buyer shall have delivered to Seller all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including without limitation those provided for in Section 4.3 hereof.

(b) As of the Closing Date, all of the representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects (with appropriate modifications permitted under this Agreement, which, if made, shall not constitute a default by Buyer).

(c) As of the Closing Date, Buyer shall have performed and observed, in all material respects, and is in full compliance with all covenants, agreements and terms of this Agreement, which are to be performed and observed by Buyer.

ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.1 **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Buyer as of the Effective Date and as of the Closing Date, subject to Section 4.2(c) hereof:

(a) Seller has good and marketable fee simple title to the Property, free and clear of all matters affecting title to the Property, except for the Permitted Exceptions.

(b) Except for the Permitted Exceptions, there are no parties in possession of any part of the Property, and there are no other rights of possession which have been granted to any third party or parties that are currently in effect.

(c) Seller has not granted to any party any option, contract or other agreement with respect to a purchase or sale of the Property that remains in effect.

(d) There are no mechanics' or materialmen's liens of record against the Property, nor are there any unsatisfied charges, debts, liabilities, claims or obligations arising from the ownership, maintenance or operation of or otherwise relating to the Property, which, to Seller's knowledge, could give rise to any mechanic's or materialmen's or constitutional, statutory or common law lien against the Property, or any part thereof.

(e) To Seller's knowledge, Seller is not in default on any of its obligations under the Title Documents or the Property Documents. Except as disclosed in the Title Document or the Property Documents, there is no agreement, in writing or otherwise, between Seller and any other person or persons for service, supply, maintenance, management or the operation of the Property that will burden the applicable portion of the Property after the Closing. The copies of the Title Documents and the Property Documents delivered by Seller to Buyer hereunder are true, accurate and

complete copies of such documents, including all amendments or modifications thereto, and the written descriptions of oral or unwritten contracts are true, accurate and complete and do not omit any material terms. Except for the Title Documents or the Property Documents, there are no contracts, agreements or obligations of any kind or nature relating to the Property and to which Buyer will be bound or to which the applicable portion of the Property will be subject after the Closing.

(f) Seller is duly organized, validly existing and in good standing under the laws of the state of its formation. Seller has the full right and authority to enter into this Agreement and consummate the transactions contemplated hereby. All requisite action has been taken by Seller in connection with the execution of this Agreement, the instruments referenced herein and the consummation of the transactions contemplated hereby. The person signing this Agreement on behalf of Seller is authorized to do so.

(g) Other than any governmental approvals required for the satisfaction of the Development Conditions, including without limitation the Agencies, no third-party approval or consent is required to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be the valid, legally-binding obligations of and enforceable against Seller in accordance with their terms.

(h) No bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, is pending or, to Seller's knowledge, threatened against Seller.

(i) Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

(j) There are no actions, suits, litigation or proceedings pending or, to Seller's knowledge, threatened affecting the Property, or affecting the right, power or authority of Seller to enter into and perform this Agreement in accordance with its terms.

(k) Seller has no knowledge, and has received no notice from any governmental authorities, that proceedings for the condemnation of any portion of the Property are pending or threatened.

(l) To Seller's knowledge, the Property has been and is presently used and operated in compliance in all material respects with, and in no material way violates, any applicable statute, law, regulation, rule, ordinance, order or permit of any kind whatsoever affecting the Property. Seller has received no notices from any governmental authority of zoning, building, environmental protection, clean air, pollution, fire, health code or other violations with respect to the Property, or violations pertaining to the use and occupancy of the Property.

(m) To Seller's knowledge:

(i) the Property does not contain PCBs or PCB Items, as those terms are defined in 40 C.F.R. Part 761;

(ii) the Property does not contain above ground or underground storage tanks, as those terms are defined in 42 U.S.C. § 6901 et seq., as amended ("**RCRA**");

(iii) there is and has been no release of petroleum into the environment from an above ground or underground storage tank at the Property, as those terms are defined in RCRA;

(iv) there is and has been no release or threatened release, other than federally permitted releases, of hazardous substances or pollutants or contaminants into the environment from or through the Property as those terms are defined in 42 U.S.C. § 9601 et seq., as amended ("**CERCLA**");

(v) the Property is not used, and has not been used, for the generation, transportation, treatment, storage or disposal of hazardous substances, pollutants or contaminants, as those terms are defined in CERCLA and RCRA;

(vi) the Property is in compliance with all applicable federal, state and local environmental statutes, regulations, ordinances, permits, approvals or judicial or administrative orders issued thereunder; and

(vii) the Property contains no conditions that could result in recovery by any governmental or private party of remedial or removal costs, natural resource damages, property damages, damages for personal injuries, other costs, expenses or damages, or could result in injunctive relief, arising from any alleged injury or threat of injury to health, safety or the environment relating to the Property.

(n) Subject to Seller's other representations, warranties and covenants set forth herein, Buyer acknowledges and agrees to take, and Seller shall deliver, the Property in its "AS IS" "WHERE IS" condition and with all faults, including any environmental or physical conditions existing on the Closing Date for each portion of the Property. Subject to Seller's other representations, warranties and covenants set forth herein, Seller specifically disclaims any representations, warranties, covenants or guarantees, whether expressed or implied, with respect to any environmental or physical condition of the Property or its habitability, merchantability or fitness for any particular purpose whatsoever.

Section 5.2 **Knowledge Defined.** References to the “knowledge” of Seller shall refer to the current actual knowledge of the Seller’s Board and officers on the Effective Date, and references to the “knowledge” of Buyer shall refer to the current actual knowledge of the Board and officers of Buyer. Nothing herein shall be construed to imply or mean that such person or persons shall have any personal liability for a breach of any representation, warranty or covenant, and each party agrees that such person shall have no personal liability whatsoever for any liability that may arise under this Agreement.

Section 5.3 **Survival of Seller’s Representations and Warranties.** Each of the representations and warranties contained in Section 5.1 are acknowledged by Seller to be material and to be relied upon by Buyer in proceeding with this transaction, and shall survive the Closing until eighteen (18) months after the Closing Date.

Section 5.4 **Covenants of Seller.** Seller hereby covenants with Buyer as follows with respect to the operation and management of the Property from the Effective Date hereof until the Closing or earlier termination of this Agreement:

(a) Seller shall not do anything, nor permit anything to be done, which would impair or modify the status of title, including without limitation the filing of any lien or encumbrance against the Property, as shown on the Commitment or the Survey.

(b) Seller shall not enter into any service contract or other contract pertaining to any portion of the Property which, following the Closing, will be binding upon Buyer or such portion of the Property without, in each instance, obtaining the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed prior to the expiration of the Due Diligence Period, and may be withheld in Buyer’s sole and absolute discretion thereafter. The foregoing shall not apply to any service contract which has a term of thirty (30) days or less or is terminable by Seller.

(c) Seller shall not permit any transfer of any of Seller’s interest in the Property or permit any encumbrance of same by any obligations.

(d) Seller shall use reasonable efforts to operate and maintain the Property in a manner generally consistent with the manner in which Seller has operated and maintained the Property prior to the date hereof. Seller agrees that all liability insurance for any portion of the Property shall be kept in effect until the Closing and warrants that there are no requirements of any insurance carrier covering the Property or any portion thereof with which Seller has not fully complied.

(e) From the Effective Date hereof until the Closing or earlier termination of this Agreement, Seller shall not enter into any lease affecting the Property

without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion.

(f) From and after the Effective Date until the earlier of the Closing or the termination of this Agreement, Seller agrees to notify Buyer promptly upon learning or receiving notice, whichever first occurs, of:

(i) Any event, transaction or occurrence which would or might materially adversely affect the Property, or any part thereof, or any other agreement with respect to the Property.

(ii) Any fact or event which would make any of the representations or warranties of Seller contained in this Agreement untrue or misleading in any material respect or which would cause Seller to be in violation of any of its covenants or other undertakings or obligations hereunder.

(iii) Any violation of any law, ordinance, regulation or law which would or might materially affect the Property or any portion thereof.

(iv) Any notice from any governmental authorities that proceedings for the condemnation of any portion of the Property are pending or threatened.

(v) Any proposed change in any zoning or law affecting the use or development of the Property or any part thereof.

(vi) Any pending or threatened litigation which affects the Property or any part thereof or which would affect the transaction contemplated thereby.

(vii) Any threatened or pending proceedings in bankruptcy or insolvency which would affect the Property or any person or entity owning any interest therein.

(viii) Any default under any of the Permitted Exceptions or the Property Documents or any act or omission which with passage of time would constitute a default.

Section 5.5 **Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to Seller as of the Effective Date, which representations and warranties shall be deemed to have been made again as of the Closing Date, subject to Section 4.3(b) hereof:

(a) Buyer is a duly organized and validly existing quasi-municipal corporation and political subdivision of the State of Colorado. Buyer has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated by this Agreement. All requisite action has been taken by Buyer in connection with the execution of this Agreement, the instruments referenced herein and the consummation of the transactions contemplated hereby. The person signing this Agreement on behalf of Buyer is authorized to do so;

(b) To Buyer's knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Buyer;

(c) No bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, is pending or, to Buyer's knowledge, threatened against Buyer;

(d) There are no actions, suits, litigations or proceedings pending or, to Buyer's knowledge, threatened affecting Buyer or its right, power or authority to enter into and perform this Agreement in accordance with its terms;

(e) Other than any governmental approvals required for the satisfaction of the Development Conditions, including without limitation the Agencies, no third-party approval or consent is required to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents hereby required to be executed by Buyer are and shall be the valid, legally-binding obligations of and enforceable against Buyer in accordance with their terms; and

(f) As of the Closing Date, Buyer agrees to pay all Expenses (as defined in Section 4.4(b)) on the Property and to record the balance due on the Purchase Price as a "Developer Advance" under the Reimbursement Agreement in accordance with Section 4.3(e).

Section 5.6 **Survival of Buyer's Representations and Warranties.** The representations and warranties of Buyer set forth in Section 5.5 are acknowledged by Buyer to be material and to be relied upon by Seller in proceeding with this transaction, and shall survive the Closing until eighteen (18) months after the Closing Date.

ARTICLE VI DEFAULT

Section 6.1 **Default by Buyer.** In the event (i) the Closing is not consummated due to Buyer's default hereunder, or (ii) Buyer files, initiates or is named, joined, or involved in any case, proceeding or action in the nature of or relating to bankruptcy, insolvency, receivership, reorganization, liquidation, dissolution, or other relief with

respect to a discharge or adjustment of any debt of Buyer, Seller shall be entitled, as its sole and exclusive remedy, to terminate this Agreement and receive the Deposit as liquidated damages for the breach of this Agreement pursuant to the provisions of Section 1.5, except as otherwise provided in Section 6.3 below. By entering into this Agreement, Buyer does not intend to create or incur, and shall not be deemed to have created or incurred, any multi-fiscal year debt or financial obligation of any nature, and except as expressly set forth in this Section 6.2, Seller's exercise of any remedy hereunder shall not affect or be collectible from an increase above the Buyer's ad valorem tax levy currently in effect (i.e., 55 mills) or from a judgment levy in accordance with C.R.S. 13-60-101, et. seq.

Section 6.2 **Default by Seller.** In addition to Buyer's remedies set forth in Section 4.6(a), in the event any Closing is not consummated due to Seller's default hereunder, Buyer shall be entitled to (i) terminate this Agreement, receive the return of the Deposit and any Closing Fee(s) paid, and recover from Seller an amount equal to Buyer's out-of-pocket costs and expenses incurred in connection with this transaction, except for the Buyer's attorney's fees, unless otherwise recoverable pursuant to Section 4.6(a) up to a maximum of \$7,500.00, or (ii) enforce specific performance of Seller's obligation to convey the Property to Buyer in accordance with the terms of this Agreement, recover reasonable costs and expenses incurred by Buyer in obtaining specific performance, and offset the same against the Purchase Price for any added costs to Buyer due to Seller's default.

Section 6.3 **Post-Closing Default.** For any post-Closing default or breach of this Agreement, the parties shall be entitled to any remedy available at law or equity, including without limitation injunction, specific performance and damages for the payment of any Expenses, except for termination of this Agreement; provided, however, during any period that a party is in default of any provision of or obligation under this Agreement, the non-defaulting party may suspend performance of any terms of and obligations under this Agreement that apply to such non-defaulting party.

Section 6.4 **Opportunity for Cure.** Notwithstanding anything in this Article VI to the contrary, before exercising any remedy provided for in this Article VI, a party must deliver written notice of the default to the other party, and such party shall have thirty (30) days from receipt of such written notice to cure any default.

ARTICLE VII COMMISSIONS

Section 7.1 **Brokerage Commissions.** The parties agree that no brokerage commissions shall be incurred in connection with this transaction. Each party agrees that if any other person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property by Seller to Buyer, and such claim is made by, through or on account of any acts or alleged acts of such party or its representatives, such party

shall protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith. The provisions of this paragraph shall survive the Closing or any termination of this Agreement.

ARTICLE VIII MISCELLANEOUS

Section 8.1 **Taking Prior to Closing.** If a "Material Portion of the Property" (as defined below) is taken by the right of, or is included in any pending action to exercise the right of, eminent domain, before the Closing for that portion of the Property, then Buyer may, in its sole and absolute discretion, terminate this Agreement by written notice to Seller given no more than fifteen (15) days after Buyer receives written notice from Seller that some or all of the Property has been so taken or such action has been commenced, whereupon this Agreement shall terminate, and neither party shall have any further rights or obligations hereunder (except for those obligations which expressly survive the termination of this Agreement), the Deposit shall be returned to Buyer, and each party shall bear its own costs incurred hereunder. A "**Material Portion of the Property**" shall be deemed to have been taken if the taking of such portion of the Property will have an adverse effect on Buyer's planned improvements or intended use of the remainder of the Property, as determined by Buyer in its sole and absolute discretion.

Section 8.2 **Public Disclosure.** Prior to and after the Closing, neither party may make any release to the public of information with respect to the sale contemplated herein or any matters set forth in this Agreement, except for: (i) a release in a form approved by Buyer and Seller; (ii) a release to the Agencies; (iii) Buyer's release of the Agreement to the electors within the Seller; or (iv) a release as may be required of Seller or Buyer by law. The provisions of this Section 8.2 shall survive the Closing or any termination of this Agreement.

Section 8.3 **Binding Agreement; Assignment.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors and assigns. Seller may not assign this Agreement without Buyer's prior written consent. Buyer may not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Buyer may assign this Agreement to (a) an affiliated entity that is owned or controlled by Buyer or (b) the City or CDOT, without Seller's prior written consent.

Section 8.4 **Notices.** Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, United States Mail, postage prepaid, registered or certified mail, return receipt requested, or legible facsimile or e-mail transmission, sent to the intended addressee at the address (or facsimile number or e-mail) set forth below, or to such other address (or

facsimile number or email) or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile transmission or e-mail, as of the date of the facsimile transmission or e-mail, provided that an original of such facsimile or e-mail is also sent to the intended addressee by one of the other means described in clauses (a), (b) or (c) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to Buyer:

Broadway Station Metropolitan District No. 1
Attention: Paul R. Cockrel
44 Cook Street, Suite 620
Denver, Colorado 80206
Telephone: (303) 218-7200

E-mail: pcockrel@cegrlaw.com

With a copy to:

Cockrel Ela Glesne Greher & Ruhland, P.C.
Attention: Paul R. Cockrel
44 Cook Street, Suite 620
Denver, Colorado 80206
Telephone: (303) 218-7196

E-mail: pcockrel@cegrlaw.com

If to Seller:

BSP West, LLC
Attention: _____

Telephone: _____
Facsimile: _____
E-mail: _____

With a copy to:

Telephone:
Facsimile:
E-mail:

If to Title Company:

Land Title Guarantee Company

Attention: Colin Snody

Telephone: 303-331-6237

Facsimile: _____

E-mail: csnody@ltgc.com

Section 8.5 **Modifications.** This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

Section 8.6 **Entire Agreement.** This Agreement, including the exhibits and schedules hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

Section 8.7 **Further Assurances.** Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the Closing, as may be reasonably requested by the other party to consummate the transaction contemplated by this Agreement. The provisions of this Section 8.7 shall survive the Closing.

Section 8.8 **Counterparts.** This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

Section 8.9 **Facsimile or E-mail Signatures.** In order to expedite the transaction contemplated herein, facsimile or e-mail signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile or e-mail document, are aware that the other party will rely on the facsimile or e-mail signatures, and waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

Section 8.10 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect, provided that the invalidity or unenforceability of such provision shall not materially adversely affect the benefits accruing to any party hereunder.

Section 8.10 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Buyer and Seller agree that the provisions of this Section 8.11 shall survive the Closing or any termination of this Agreement.

Section 8.11 **No Third-Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at the Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the Closing.

Section 8.12 **Attorneys' Fees.** Notwithstanding anything to the contrary in this Agreement, in the event that a lawsuit or other legal proceeding is brought to enforce or interpret all or any portion of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover, in addition to any other relief available to such party, the reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs, incurred in connection with such suit or proceeding.

Section 8.13 **Captions.** The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

Section 8.14 **Rules of Construction.** The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

Section 8.15 **Recordation.** This Agreement may not be recorded by any party hereto without the prior written consent of the other party hereto. The provisions of this Section 8.16 shall survive the Closing or any termination of this Agreement.

Section 8.16 **Calendar Days.** As used in this Agreement, the term "days" shall be deemed to mean each and every day of the calendar year. In the event any date called for herein falls on a Saturday, Sunday or Federal or State of Colorado holiday, such date shall be extended to the next day which is not a Saturday, Sunday or Federal or State of Colorado holiday.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth, in the preamble to this Agreement.

SELLER

BUYER

BSP West, LLC
a Colorado limited liability company

Broadway Station Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: President

Title Company executes this Agreement below solely for the purpose of acknowledging that it agrees to be bound by the provisions of Section 1.3, Section 1.4 and Section 1.5 hereof.

TITLE COMPANY:

Land Title Guarantee Company

By: _____

Name: _____

Its: _____

EXHIBIT A

Project

EXHIBIT B

Property

EXHIBIT C

Form of Deed