

When Recorded Mail To:

KRF Arkansas LLC  
Attention: Jimmy Balafas  
1509 York Street, Suite 201  
Denver, CO 80206

**KRF Arkansas LLC**  
**DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is entered into as of the date set forth on the City's signature page below (the "Effective Date") by and between KRF Arkansas, LLC, a Colorado limited liability company, its successors and assigns ("KRF"), 4201 Arkansas Metropolitan District No. 1 and 4201 Arkansas Metropolitan District No. 2 (collectively the "Districts"), and the City and County of Denver, a home rule city and municipal corporation of the State of Colorado (the "City") (each, a "Party" and, collectively, the "Parties").

**RECITALS**

A. KRF is the owner or licensee of the real property generally known as the old CDOT Headquarters site, containing approximately 13.2 acres, located at 4201 E Arkansas Street, Denver, Colorado, and as legally described on the attached Exhibit "A" and depicted in the ALTA/ASCM survey included as Exhibit "A-1" (the "Property"). The former CDOT Headquarter building and associated facilities buildings (the "Existing Building"), with associated walks, drives, parking areas, and landscaped areas, is located on the Property but will be demolished.

B. In an attempt to realize the City's vision for the area including affordable housing and integrated development, KRF desires to develop the Property as a multi-phased pedestrian-friendly, urban, mixed use development with residential, commercial, and retail uses, and a variety of publicly accessible and useable open spaces, including but not limited to enhanced connections to transit facilities, plazas, or streets, enhanced pedestrian environment, and/or enhanced public spaces (the "Project").

C. In accordance with Section 12.4.12.2 of the Zoning Code, the City's Development Review Committee ("DRC") will not require a General Development Plan ("GDP") because the land use, development and infrastructure issues related to the Project will be adequately resolved through this development agreement and a rezoning of the property.

D. The Districts are quasi-municipal corporations and political subdivisions of the State of Colorado formed with the ability to finance, maintain, repair and replace certain public infrastructure benefitting the Property, including, without limitation, all public open spaces and

Property-wide storm water and water quality facilities not otherwise accepted by the City perpetually.

E. Access to the Project is provided by Arkansas Street and Louisiana Avenue with associated neighborhood access via Birch Street and the possible re-establishment of Bellaire Street through the development of the Project.

F. The Parties desire to enter into this Agreement for the purposes of developing a coherent framework for development of the Property, the construction, installation and maintenance of public improvements and certain private improvements, and fully satisfying requirements of this Agreement.

G. The City Council, pursuant to Council Bill No. 2018-1075, has rezoned the Property to S-MX-8, 5, 3 and S-MU-3 to accommodate development of the Property (“Rezoning”). The Rezoning is referred to in this Agreement as the “Zoning”.

H. References in this Agreement to “Temporary Certificate of Occupancy” and “Certificate of Occupancy” have the meanings assigned to each of them in the 2016 Denver Building and Fire Code, as such code may be amended, replaced, or modified from time-to-time hereafter.

## **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained herein and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. All of the Recitals above are hereby confirmed and incorporated herein as part of this Agreement.
2. Subdivision of Property and Site Development Plan(s). KFR shall submit the overall property for subdivision, in one or multiple submittals. The affordable housing parcel will be created through a parcel reconfiguration that will be completed prior to the full subdivision process. Once subdivided, each portion of a subdivided property shall complete a Site Development Plan process with the City in accordance with City standards. The entire property may complete a Site Development Plan process with the City in accordance with City Standards. Each Site Development Plan will be required to provide plans and engineering demonstrating sufficient infrastructure improvements to that portion of the Project to be constructed (or are already in place) within the applicable subdivision to support the proposed development within said Site Development Plan. If the property is developed utilizing multiple Site Development Plans, the party submitting each Site Development Plan shall also submit the following (either on the face of the Site Development Plan or separately): (A) reasonably detailed documentation tracking total development to date within the Property, (B) open space provided within the Property to date..

3. Drainage Study. KRF agrees to provide the City with a master drainage study (“Drainage Study”) of the entire Property addressing all drainage issues, including, but not limited to, on-site detention and water quality. Regarding detention, the City agrees that the Drainage Study may propose that the entirety of the project utilize underground detention. Regarding water quality, as part of the Drainage Study, KRF may show the use of underground and at grade water quality, for future consideration by the City. The City shall have completed its normal review, comment and approval process on the Drainage Study prior to any concept site development plan process submittal being allowed to move to the formal phase of the site development plan process. The affordable housing parcel may be submitted to the City prior to full Drainage Study, but said parcel must provide its own drainage improvements, including detention and water quality.

4. Traffic Study. KRF agrees to provide the City with a master traffic study (“Traffic Study”) of the entire Property addressing all transportation issues, including, but not limited to, on-site and off-site intersections, street layout on site, multi-modal connections and other elements as determined in a scoping session with the Department of Public Works (“PW”). This study should also include an evaluation of the possibility of restricting vehicle access and allowing only bicycle and pedestrian traffic to that portion of Arkansas Avenue between Birch Street and the alley west of Clermont Street. The City shall have completed its normal review, comment and approval process on the Traffic Study prior to any concept site development plan (excluding the affordable housing parcel (s)) process submittal being allowed to move to the formal phase of the site development plan process. Any mitigation required in the Traffic Study will be designed and constructed by KRF.

5. Open Space. KRF agrees to provide a minimum of ten percent (10%) of the Net Developable Area of the Project as publicly accessible open space or designated park space. No later than the submittal of the first concept plan (excluding the Affordable Housing parcel(s)) as part of the Site Development Plan process, an open space plan must be submitted to CPD for review and approval of how this open space will be provided across the entire site. The “Net Developable Area” will be determined by subtracting street area from the gross area of the Property according to the following parameters: (i) private drives and private access fire drives are not subtracted from the gross area; (ii) streets not owned or maintained by the City, but with public access easements are subtracted from the gross area; and (iii) rights-of-way or right-of-way easements dedicated to the City are subtracted from the gross area. The location of that open space shall be identified in the Site Development Plan(s). All open space shall meet the following criteria: (1) Open space shall be provided in one or more areas located within the net developable area; and (2) open space shall remain publicly accessible and usable through either: (A) conveyance to the City for potential park designation; (B) conveyance to one or both of the District(s); and if owned by KRF, (C) KRF’s execution and recording of a perpetual, non-exclusive easement for each Private Open Space parcel allowing public use as set forth in more detail below; and (3) open space shall result in one or more of the following public benefits: (A) enhanced connections to transit facilities, plazas, or streets; (B) enhanced pedestrian environments; (C) enhanced or new public

spaces; and (D) quality spaces for active and passive recreation. Community Planning and Development (“CPD”), in consultation with the Denver Department of Parks and Recreation (“DPR”) shall review and approve all Private Open Space designs, unless KRF determines through consultation with CPD and DPR that some or all of this open space is desired to become dedicated park land, in which use such land shall be required to be designed to DPR standards.

6. Publicly Accessible, Privately Owned Open Space (“Private Open Space”). Unless a later date is approved by the Executive Director of CPD, prior to approval of the Site Development Plan for vertical development on the parcel triggering development of Private Open Space, KFR or the Districts as applicable shall grant to the City an easement in substantially the form set forth in Exhibit “B” (the “OS Easement”). The OS Easement for each parcel of Private Open Space will be recorded no later than City’s final approval of the Site Development Plan or subdivision on the respective parcels.

7. Traffic and Roadways.

a. Traffic Management.

i. Road Infrastructure. All onsite and abutting City right-of-way frontage transportation infrastructure, including but not limited to, the re-establishment of a north/south connection through the site and other public streets, private streets, sidewalks, streetscape improvements, lighting, signage and other requirements within the boundaries of the Project, other improvements identified and required by the Traffic Study, and abutting City right-of-way frontage along the Project shall be, or caused to be, constructed by KRF in substantial conformance with all applicable City Rules and Regulations governing site development and infrastructure. The extent of the onsite road infrastructure needed to support each building constructed will be determined during the Site Development Plan phase for each project.

ii. Transportation Demand Management. A master Transportation Demand Management (“TDM”) study will be provided to the City for review and approval. Each concept Site Development Plan for a parcel of vertical development within the Property shall submit a letter identifying the TDM practices utilized. Such TDM plan may include recommendation of TDM consultant and some or all the elements listed in the sample plan attached to this Agreement as Exhibit “C” and incorporated into it by this reference.

iii. Each concept Site Development Plan for a parcel of vertical development within the Project may submit a traffic memorandum showing conformance to the Master Traffic Study. This would exclude the affordable housing parcel, a transportation engineering plan will be provided.

iv. If restricting vehicle traffic on Arkansas Avenue between Birch Street and the alley West of Clermont Street is determined feasible by KRF and approved by PW,

KRF shall be responsible for preparing transportation engineering plans for this portion of the street to design the closure, and proposed pedestrian and bicycle facilities, and shall be responsible for such installation.

d. The public amenity zone along Arkansas Avenue may be permitted to deviate from the standard cross section in order to preserve some of the existing, valuable trees, therein.

b. In the event, Regional Transportation District (“RTD”) is willing to relocate the bus stop at the southwest corner of Birch Street and Arkansas Avenue, the City will allow this relocation.

8. Public Meeting. Upon submittal of the Drainage Study, the Traffic Study, the Open Space Plan and Conceptual Site Plan, KRF shall schedule a public meeting to review these documents, to take place within 45 days from the date of submittal. KRF shall send written notice of the public meeting at least 21 days prior to the meeting to: the city council member in whose district the Property is located, the owners of any real property located in whole or in part within, or within 200 feet of the site, and registered neighborhood organizations registered according to D.R.M.C. Section 12-94 whose boundaries encompass or are located within 200 feet of the site. The Project Coordinator or a designee from Development Services shall attend this meeting. KRF may continue the Site Development Plan and Building permit process concurrently with this requirement.

9. Construction Manager. KRF shall identify a Construction Manager, and provide the contact information for the construction manager to the City within 45 days of the Effective Date of this Agreement, and shall notify the City of any change of the construction manager within 10 days of such change. The Construction Manager shall oversee and coordinate construction-related activities for the Property. The Construction Manager shall 1) schedule kick-off meeting upon issuance of any construction/building permit to discuss site logistics (site access and parking) and to introduce project team; and, 2) during construction will provide construction updates of major work and address concerns or questions on a case-by-case basis as requested with the registered neighborhood organizations, as described in paragraph 8, above, and the city council member in whose district the Property is located.

10. Ownership and Operation of Non-City Owned Improvements.

a. Following KRF’s initial construction of each parcel containing Private Open Space and/or detention/retention/water quality areas on private property (each a “Detention Area”), KRF shall transfer title to such parcel of Private Open Space or Detention Area to one or both of the District(s) in accordance with Districts’ service plans, as may be further amended; which transfer shall include the District(s) accepting ownership and maintenance of such improvements and being bound by the terms and conditions of any existing or required easements related to the Private Open Spaces and Detention Areas. Subject to the provisions of the service plans for such

District(s), as may be amended, and applicable law, the District(s) shall own each parcel of Private Open Space located within or without such District's boundaries, and shall maintain, repair, replace, and operate such parcel of Private Open Space, including any public improvements located therein, in accordance with each District's respective service plan, as may further be amended. Nothing contained herein shall prohibit the District(s) from coordinating with one another, or with other third parties, in maintaining, repairing, replacing and operating such parcel(s) of Private Open Space. Subject to the provisions of the service plans for such District(s), as may be amended, and applicable law, the District(s) shall own the parcel(s) constituting the Detention Areas located within or without such District's boundaries, and shall maintain, repair, replace, and operate such parcel of Detention Areas, including any public improvements located therein, in accordance with each District's respective service plan, as may be further amended. Any public improvement conveyed to the District(s), including, without limitation, applicable Private Open Space(s) and/or Detention Area(s), will be dedicated or conveyed to such District(s) subject to any acceptance requirements adopted by or otherwise required by the District(s), in each District's reasonable sole discretion. The City agrees to review any reasonable written request by the District(s) to enter into a separate intergovernmental agreement with respect to any District activities or ownership of Private Open Spaces and Detention Areas.

b. Following the construction of such non-City owned public improvements and if any additional easement or agreement is necessary to allow for the maintenance, repair, and replacement of such non-City owned public improvements by the responsible party, such areas shall be permanently operated, maintained, repaired and replaced by such respective party or its successor. KRF shall also grant such additional permanent non-exclusive easement interests to such parties, in mutually agreed-upon form between KRF and such party, as may be required to allow such party to provide such maintenance, repair and replacement services for the Private Open Spaces and Detention Areas, to the extent that KRF remains in ownership of a portion or all Private Open Spaces and Detention Areas, as detailed herein. All dedications or conveyances of public improvements for the ownership, maintenance, or both may be subject to additional agreements, easements, or deeds as may be necessary to give effect to the terms and conditions of this Section.

11. Failure of Rezoning. The approval of the Rezoning by the Denver City Council is a condition precedent to KRF's obligations under this Agreement. Should the City Council fail to approve the Rezoning within ninety (90) days after the date of this Agreement even if executed by KRF or the City, then this Agreement is automatically void without further action of the City or KRF, and the City shall not record this Agreement or any related agreements in the public records for the City and County of Denver.

12. Affordable Housing. KRF shall construct at least one hundred and fifty (150) housing units with a maximum affordability restriction of sixty percent (60%) AMI (area median income) with an affordable period of no less than twenty (20) years on the Property. The Denver Office of Economic Development ("OED") shall review and approve the manner and outcome of the compliance of the affordable housing commitment described in this Section. If City subsidies are

utilized for the construction of units, such units shall be subject to the affordability period and any other terms required to receive such funding. The Parties agree that pursuant to D.R.M.C. Sec. 27-154, as it may be amended from time to time, the project shall be exempt from payment of the linkage fees in connection with the issuance of any building permits for structures in the Project.

13. Miscellaneous.

a. Compliance with General Regulations. Nothing in this Agreement shall preclude the City's application of its health and safety regulations, its regulations of general applicability (including, but not limited to, street and streetscape regulations, building, fire, plumbing, electrical and mechanical codes, the Denver Revised Municipal Code, and other City rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the date of this Agreement or may be enacted or amended after the date of this Agreement. KRF does not waive its right to oppose the enactment or amendment of any such regulations or to challenge the validity of such regulations through proper means.

b. Severability. In the event any clause, sentence or any portion of the terms, conditions, covenants and provisions of this Agreement are deemed illegal, null or void for any reason or are held by any court of competent jurisdiction to be so, the remaining portions of this Agreement shall remain in full force and effect.

c. Choice of Law. This Agreement shall be governed by the laws of the State of Colorado and the laws, rules and regulations of the City and County of Denver.

d. Captions for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

e. Exhibits. All exhibits attached to this Agreement are incorporated herein and are made a part hereto as if fully set forth herein.

f. Appropriation. Any obligations of City hereunder are subject to the prior appropriation of monies expressly made by the Denver City Council for such purposes and paid into the Treasury of the City.

g. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. KRF shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to any party that receives an assignment of KRF's rights and duties hereunder, including but not limited to, any party acquiring an interest or estate in the Property, the Project, or any improvements constructed thereon, provided that to the extent KRF assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of KRF's obligations under this Agreement concerning the Property and/or rights and duties subject to such assignment by its assignee or transferee shall thereby relieve KRF of any further

obligations under this Agreement concerning such property and/or rights and duties and shall release the City from further obligation to KRF, with respect to the matter so assumed. KRF shall provide the City with a copy of such assignment or notify the City of any such assignment with a certification that KRF and such assignee have complied with the terms and provisions of this Subsection 11.g in the applicable assignment. In no event shall a default by any such assignee with respect to the obligations assumed by such assignee affect the rights or obligations of KRF or any other assignee under this Agreement that were not assigned to or assumed by such defaulting assignee, nor shall KRF be liable to the City with respect to such assignee's default.

h. No Discrimination. In connection with the performance of work under this Agreement, the non-City Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status or physical and mental disability; and the other Parties further agree to insert the foregoing provision in all subcontracts hereunder.

i. No Liability. No council member, elected official, director, officer, agent, or employee of the City or District(s) shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement, because of any breach of this Agreement, or because of its or their execution, approval or attempted execution of this Agreement.

j. Default; Cure Period; Remedies. In event of a breach by either Party of their obligations under this Agreement, the non-defaulting Party may seek specific performance, but not damages. The Parties expressly waive the right to either seek and/or be awarded damages in any form whether actual, consequential or punitive. The failure of the City to appropriate shall not be considered a breach or default under this Agreement. In the event of a default by either Party under this Agreement, the non-defaulting Party shall deliver written notice to the defaulting Party of such default, at the address specified in Subsection 13.n below, and the defaulting Party shall have thirty (30) days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting Party gives written notice to the non-defaulting Party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure. A "breach" or default" under this Agreement is the failure by a Party to fulfill or perform any material obligation of such Party.

k. Attorney Review. All Parties hereto and their attorneys have had full opportunity to review and participate in the drafting of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.



1. Conflict of Interest. Each non-City Party shall not knowingly permit any of the following persons to have any interest, direct or indirect, in this Agreement: A member of the governing body of the City or an employee of the City who exercises responsibility concerning this Agreement.

m. Modification; Termination. This Agreement may be amended or terminated only by mutual consent in writing of the Parties. Any such modification or termination shall be approved by the Executive Director of DPW and the Executive Director of CPD and shall not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

n. Notices. All notices provided for in this Agreement shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this Subsection 10.n:

If to the City or CPD:

Executive Director of Community Planning & Development  
201 W. Colfax Avenue, Dept. 205  
Denver, Colorado 80202

If to DPR:

Executive Director of Dept. of Parks & Recreation  
201 W. Colfax Avenue, Dept. 601  
Denver, Colorado 80202

If to DPW:

Executive Director of Dept. of Public Works  
201 W. Colfax Avenue, Dept. 506  
Denver, Colorado 80202

If to KRF:

KRF  
Attention: Jimmy Balafas  
1509 York Street, Suite 201  
Denver, CO 80206

With a copy to:

Brownstein Hyatt Farber Schreck  
Attn: Carolynne White  
410 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202

If to either of the District(s):

4201 Arkansas Metropolitan District Nos. 1 & 2  
c/o White Bear Ankele Tanaka & Waldron, Attorneys at Law  
Attention: Kristen Bear, Esq.  
2154 East Commons Avenue, Suite 2000  
Centennial, CO 80122

A copy of any notice provided to the City, CPD, DPR, or DPW, shall also be provided to:

Denver City Attorney  
1437 Bannock Street, Room 353  
Denver, Colorado 80202

o. No Obligation to Develop. KRF shall have the right to develop the Site in the order, at the rate and at the time as market conditions dictate, subject to the terms and conditions of this Agreement. KRF and the City contemplate that the site will be developed in phases.

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

q. Dry Utility Easements. In the event KRF elects to enter into easements (or licenses) for dry utilities (including, but not limited to, electricity, natural gas, and telecommunications) that are located in areas that are anticipated to be or indicated as future right-of-way, then any such easement (or license) shall contain the following language (as modified for the appropriate easement or license):

“This [easement/license (as applicable)] or any portion thereof shall automatically terminate upon dedication of that portion of such [easement/license] area to the City as public street right-of-way. Any portion of such [easement/license] area not so dedicated or designated as public right-of-way shall remain in full force and effect.”

r. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. Facsimile and PDF signatures shall be accepted as originals. The City consents to the use of electronic signatures by any Party hereto. This Agreement and any other documents requiring a signature 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, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this KRF Arkansas, LLC Development Agreement on the date set forth below by the Parties' signatures, but effective on the Effective Date:

CITY:

CITY AND COUNTY OF DENVER,  
a Colorado municipal corporation

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Registered and Countersigned:

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

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

Attest:

\_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk of  
the City and County of Denver

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

IN WITNESS WHEREOF, the Parties hereto have executed this KRF Arkansas, LLC Development Agreement on the date set forth below by the Parties' signatures, but effective on the Effective Date:

KRF:  
KRF ARKANSAS LLC,  
a Colorado limited liability company

By Its Manager(s):

[Signature]  
a MANAGER

and

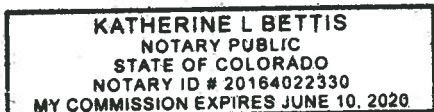
\_\_\_\_\_  
a \_\_\_\_\_

\_\_\_\_\_, Manager Date

STATE OF Colorado )  
 )  
COUNTY OF Denver )

The foregoing instrument was acknowledged before me on the 19<sup>th</sup> day of October, 2018, by George Balafas, as Manager of KRF ARKANSAS LLC.

WITNESS my hand and official seal.



[Signature]  
Notary Public

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as Manager of KRF ARKANSAS LLC.

WITNESS my hand and official seal.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Fox North Development Agreement on the date set forth below by the Parties' signatures, but effective on the Effective Date:

4201 ARKANSAS METROPOLITAN DISTRICT  
NO. 1, a quasi-municipal corporation and political  
subdivision of the State of Colorado

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Officer

ATTEST:

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4201 ARKANSAS METROPOLITAN DISTRICT  
NO. 2, a quasi-municipal corporation and political  
subdivision of the State of Colorado

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Officer

ATTEST:

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APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON  
Attorneys at Law

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General Counsel to the District(s)

Exhibit "A" to  
KRF ARKANSAS LLC

Legal Description of KRF Property

**LEGAL DESCRIPTION S-MX-8 (UO-2) ZONE DISTRICT BOUNDARY:**

A PARCEL OF LAND LOCATED IN THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE EAST 31 FEET OF LOT 1, BLOCK 4, KIBLER ADDITION, BEING A POINT ON THE SOUTH LINE OF LOUISIANA AVENUE MONUMENTED BY AN ALLOY DISK STAMPED PLS 25379 AND AS DEFINED BY THE SURVEY SHOWN ON THE DOCUMENT RECORDED IN THE CITY AND COUNTY OF DENVER RECORDS UNDER RECEPTION NO. 2013045280; THENCE N89°50'49"E ALONG THE SOUTH LINE OF LOUISIANA AVENUE, 202.36 FEET TO THE NORTHEAST CORNER OF THE WEST ½ OF VACATED SOUTH ALBION STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS; THENCE S00°02'20"E ALONG THE EAST LINE OF THE WEST ½ OF SAID VACATED SOUTH ALBION STREET, 250.37 FEET TO A POINT 30.00 FEET EAST OF THE SOUTHEAST CORNER OF LOT 39, BLOCK 4, KIBLER ADDITION; THENCE S89°50'50"W ALONG AN EXTENSION OF THE SOUTH LINE OF SAID LOT 39 AND THE SOUTH LINE OF SAID LOT 39 AND SAID LINE EXTENDED, 202.36 FEET TO THE SOUTHWEST CORNER OF THE EAST 31 FEET OF LOT 10, BLOCK 4, KIBLER ADDITION; THENCE N00°02'20"W ALONG THE WEST LINE OF THE EAST 31 FEET OF SAID LOT 10 AND SAID LINE EXTENDED, 250.37 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

THE ABOVE DESCRIBED PARCEL CONTAINS 50,665 SQUARE FEET OR 1.1631 ACRES MORE OR LESS.

**LEGAL DESCRIPTION S-MX-8 ZONE DISTRICT BOUNDARY:**

A PARCEL OF LAND LOCATED IN THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST 31 FEET OF LOT 1, BLOCK 4, KIBLER ADDITION, BEING A POINT ON THE SOUTH LINE OF LOUISIANA AVENUE MONUMENTED BY AN ALLOY DISK STAMPED PLS 25379 AND AS DEFINED BY THE SURVEY SHOWN ON THE DOCUMENT RECORDED IN THE CITY AND COUNTY OF DENVER RECORDS UNDER RECEPTION NO. 2013045280; THENCE N89°50'49"E ALONG THE SOUTH LINE OF LOUISIANA AVENUE, 202.36 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG ABOVE DESCRIBED COURSE, 622.64 FEET TO THE NORTHWEST CORNER OF LOT 1, BLOCK 1, KIBLER ADDITION, SAID POINT ALSO BEING ON THE EAST LINE OF VACATED SOUTH BELLAIRE

STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS; THENCE S00°02'20"E ALONG THE WEST LINE OF SAID LOT 1 AND SAID LINE EXTENDED (ALSO ALONG THE EAST LINE OF SAID VACATED SOUTH BELLAIRE STREET), 454.88 FEET TO A POINT ON THE WEST LINE OF LOT 8, BLOCK 1, KIBLER ADDITION; THENCE S89°50'50"W, 201.68 FEET; THENCE S00°09'10"E, 86.07 FEET; THENCE S89°50'51"W, 421.14 FEET TO A POINT ON THE WEST LINE OF THE EAST ½ OF VACATED SOUTH ALBION STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS; THENCE N00°02'20"W ALONG THE WEST LINE OF THE EAST ½ OF SAID VACATED SOUTH ALBION STREET, 540.94 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

THE ABOVE DESCRIBED PARCEL CONTAINS 319,465 SQUARE FEET OR 7.3339 ACRES MORE OR LESS.

**LEGAL DESCRIPTION S-MX-5 ZONE DISTRICT BOUNDARY:**

A PARCEL OF LAND LOCATED IN THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST 31 FEET OF LOT 1, BLOCK 4, KIBLER ADDITION, BEING A POINT ON THE SOUTH LINE OF LOUISIANA AVENUE MONUMENTED BY AN ALLOY DISK STAMPED PLS 25379 AND AS DEFINED BY THE SURVEY SHOWN ON THE DOCUMENT RECORDED IN THE CITY AND COUNTY OF DENVER RECORDS UNDER RECEPTION NO. 2013045280; THENCE N89°50'49"E ALONG THE SOUTH LINE OF LOUISIANA AVENUE, 825.00 FEET TO THE POINT OF BEGINNING BEING THE NORTHWEST CORNER OF LOT 1, BLOCK 1, KIBLER ADDITION, SAID POINT ALSO BEING ON THE EAST LINE OF VACATED SOUTH BELLAIRE STREET VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS; THENCE CONTINUING ALONG ABOVE DESCRIBED COURSE, 236.32 FEET TO THE INTERSECTION OF THE SOUTH LINE OF LOUISIANA AVENUE AND THE WEST LINE OF SOUTH BIRCH STREET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 20, BLOCK 1, KIBLER ADDITION; THENCE S00°02'20"E ALONG THE WEST LINE OF SOUTH BIRCH STREET, 277.44 FEET; THENCE S89°50'50"W, 148.32 FEET; THENCE S00°02'20"E, 60.00 FEET; THENCE S89°50'50"W, 4.12 FEET; THENCE S00°02'20"E, 118.44 FEET; THENCE S89°50'50"W, 83.88 FEET TO A POINT ON THE EAST LINE OF VACATED SOUTH BELLAIRE STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS, SAID POINT BEING ON THE WEST LINE OF LOT 8, BLOCK 1, KIBLER ADDITION; THENCE S00°02'20"E ALONG THE EAST LINE OF SAID VACATED SOUTH BELLAIRE STREET, 125.07 FEET; THENCE S89°50'50"W, 622.64 FEET TO A POINT ON THE WEST LINE OF THE EAST ½ OF VACATED SOUTH ALBION STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS; THENCE N00°02'20"W ALONG THE WEST LINE OF THE EAST ½ OF SAID VACATED SOUTH ALBION STREET, 40.00 FEET; THENCE N89°50'51"E, 421.14 FEET; THENCE N00°09'10"W, 86.07 FEET; THENCE N89°50'50"E, 201.68 FEET TO A POINT ON THE EAST LINE OF SAID VACATED SOUTH BELLAIRE STREET, SAID POINT ALSO BEING ON THE WEST LINE OF SAID LOT 8, BLOCK 1, KIBLER ADDITION; THENCE N00°02'20"W, 454.88 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO



THE ABOVE DESCRIBED PARCEL CONTAINS 123,037 SQUARE FEET OR 2.8245 ACRES MORE OR LESS.

**LEGAL DESCRIPTION S-MX-3 ZONE DISTRICT BOUNDARY:**

A PARCEL OF LAND LOCATED IN THE NORTHWEST  $\frac{1}{4}$  OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE EAST 31 FEET OF LOT 1, BLOCK 4, KIBLER ADDITION, BEING A POINT ON THE SOUTH LINE OF LOUISIANA AVENUE MONUMENTED BY AN ALLOY DISK STAMPED PLS 25379 AND AS DEFINED BY THE SURVEY SHOWN ON THE DOCUMENT RECORDED IN THE CITY AND COUNTY OF DENVER RECORDS UNDER RECEPTION NO. 2013045280; THENCE N89°50'49"E ALONG THE SOUTH LINE OF LOUISIANA AVENUE, 1061.33 FEET TO THE INTERSECTION OF THE SOUTH LINE OF LOUISIANA AVENUE AND THE WEST LINE OF SOUTH BIRCH STREET, SAID POINT ALSO BEING THE NORTHEAST CORNER OF LOT 20, BLOCK 1, KIBLER ADDITION; THENCE S00°02'20"E ALONG THE WEST LINE OF SOUTH BIRCH STREET, 337.44 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE EAST LINE OF LOT 15, BLOCK 1, KIBLER ADDITION; THENCE CONTINUING ALONG THE WEST LINE OF SOUTH BIRCH STREET S00°02'20"E, 263.44 FEET TO THE INTERSECTION OF THE WEST LINE OF SOUTH BIRCH STREET AND THE NORTH LINE OF ARKANSAS AVENUE, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 11, BLOCK 1, KIBLER ADDITION; THENCE S89°50'50"W ALONG THE NORTH LINE OF ARKANSAS AVENUE, 858.96 FEET TO A POINT ON THE WEST LINE OF THE EAST  $\frac{1}{2}$  OF VACATED SOUTH ALBION STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS; THENCE N00°02'20"W ALONG THE WEST LINE OF THE EAST  $\frac{1}{2}$  OF SAID VACATED SOUTH ALBION STREET, 19.93 FEET; THENCE N89°50'50"E, 622.64 FEET TO A POINT ON THE EAST LINE OF VACATED SOUTH BELLAIRE STREET AS VACATED IN BOOK 806 AT PAGE 385 OF THE CITY AND COUNTY OF DENVER RECORDS, SAID POINT ALSO BEING ON THE WEST LINE OF LOT 10, BLOCK 1, KIBLER ADDITION; THENCE N00°02'20"W ALONG THE EAST LINE OF SAID VACATED SOUTH BELLAIRE STREET, 125.07 FEET; THENCE N89°50'50"E, 83.88 FEET; THENCE N00°02'20"W, 118.44 FEET; THENCE N89°50'50"E, 152.44 FEET TO THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

THE ABOVE DESCRIBED PARCEL CONTAINS 64,729 SQUARE FEET OR 1.4860 ACRES MORE OR LESS.

**LEGAL DESCRIPTION S-MU-3 ZONE DISTRICT BOUNDARY:**

ALL OF LOTS 10, 11 AND 12 GARWOOD SUBDIVISION RECORDED NOVEMBER 15, 1950, AT RECEPTION NO. 446849 IN THE RECORDS OF THE CITY AND COUNTY OF DENVER, STATE OF COLORADO. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE NORTHWEST ¼ OF SECTION 19, TOWNSHIP 4S, RANGE 67W, OF THE 6TH PRINCIPAL MERIDIAN, IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 12; THENCE S89°51'20"W, COINCIDENT WITH THE SOUTH LINE OF SAID LOT 12, A DISTANCE OF 137.23 FEET; THENCE ON THE ARC OF A CURVE TO THE RIGHT, A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°58'23", A DISTANCE OF 23.55 FEET, (A CHORD BEARING N45°09'28"W, A DISTANCE OF 21.21 FEET) TO A POINT ON THE WEST LINE OF SAID LOT 12; THENCE N00°10'17"W COINCIDENT WITH THE WEST LINE OF SAID LOTS 12 AND 10, A DISTANCE OF 115.07 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; THENCE N89°51'20"E COINCIDENT WITH THE NORTH LINE OF SAID LOTS 10 AND 11, A DISTANCE OF 152.22 FEET TO THE NORTHEAST CORNER OF SAID LOT 11; THENCE S00°10'17"E COINCIDENT WITH THE EAST LINE OF SAID LOTS 11 AND 12, A DISTANCE OF 130.06 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 19,750 SQUARE FEET OR 0.4533 ACRES MORE OR LESS.

**BASIS OF BEARINGS FOR ALL LEGAL DESCRIPTIONS:**

AN ASSUMED BEARING OF N00°10'17"W BEING A 10 FOOT CITY AND COUNTY OF DENVER RANGE LINE LOCATED IN SOUTH BIRCH STREET BETWEEN TWO FOUND MONUMENTS 690.88 FEET APART. BOTH MONUMENTS BEING AN AXLE IN A CITY AND COUNTY OF DENVER SURVEY RANGE POINT BOX; ONE AT THE INTERSECTION OF SOUTH BIRCH STREET AND ARKANSAS AVENUE AND THE OTHER AT THE INTERSECTION OF SOUTH BIRCH STREET AND LOUISIANA AVENUE.

PREPARED BY:

DAMIEN CAIN  
STATE OF COLORADO PLS 38284  
FOR AND ON BEHALF OF  
39 NORTH ENGINEERING AND SURVEYING LLC  
PREPARED ON MAY 14, 2018  
REVISED JULY 6, 2018  
REVISED AUGUST 28, 2018

Exhibit "A-1" to  
4201 ARKANSAS Development Agreement

ALTA/ASCM Survey of the Property

Exhibit "B" to  
4201 ARKANSAS Development Agreement

Form of Open Space Easement

After Recording Return to:

Denver City Attorney's Office  
201 W. Colfax Avenue, Dept. 1207  
Denver, CO 80202

**PERMANENT EASEMENT FOR KRF PRIVATELY OWNED OPEN SPACE**

This Permanent Easement for KRF Privately Owned Open Space (this "Easement") is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ ("Grantor") and the CITY AND COUNTY OF DENVER, a Colorado municipal corporation and a home rule city ("Grantee" or "City");

WITNESSETH:

That for and in consideration of the Private Open Spaces and the OS Requirement as set forth in the KRF Arkansas Development Agreement recorded within the Denver County real property records on \_\_\_\_\_ at Reception No. \_\_\_\_\_ (the "Development Agreement") and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby agrees to the following:

Grantor hereby grants and conveys unto the Grantee for the benefit of the City and the general public a permanent non-exclusive easement upon, across and over the parcel(s) described below (collectively, the "Easement Area(s)") for the purpose of using such Easement Area(s) for publicly accessible and usable open space ("Open Space Easement") as required by the Development Agreement.

Nothing herein shall require the City to construct, reconstruct, maintain, service or repair such any improvements in the Easement Area(s).

The permanent easement granted herein is located in the City and County of Denver, State of Colorado, and is upon, across, and over the land described as follows:

SEE EXHIBIT A  
ATTACHED HERETO AND INCORPORATED HEREIN

The Grantor does hereby covenant with the Grantee that it is lawfully seized and possessed of the Property, and that it has a good and lawful right to grant this permanent Open Space Easement in the Property.

Grantor further covenants and agrees that, unless otherwise authorized by a Site Development Plan approved by the City, no building, structure, or other above or below ground obstruction that may interfere with the purposes for which this Easement is granted may be placed, erected, installed or permitted upon the Easement Area(s). Grantor further agrees that in the event the terms of this Easement are violated, such violation shall immediately be corrected by the Grantor upon receipt of written notice from the City, or the City may itself elect to correct or eliminate such violation at the Grantor's expense. The Grantor shall promptly reimburse the City for any costs or expenses incurred by the City in enforcing the terms of this paragraph.

Notwithstanding the foregoing and the grant of the Open Space Easement to Grantee pursuant to this Easement, Grantee hereby grants to and for the benefit of Grantor, and Grantor's employees, agents, contractors, subcontractors, successors, assigns, lessees, and licensees, a temporary, non-exclusive license (the "Temporary Construction License") on, over, across and under the Easement Area(s) for the purpose of performing construction activities related to the development of the Easement Area(s) and adjacent parcels of Grantor's property, including, but not limited to, accessing the Easement Area(s) during construction, installing an access road and sidewalks within the Easement Area(s), installing fencing, barriers, and otherwise controlling or limiting entry to the Easement Area(s) by the public or Grantee, performing staging and other pre-construction activities in the Easement Area(s), and all uses reasonably associated with such construction activities; installing and relocating underground utility lines and related facilities within the Easement Area(s); installing storm sewer drains and related facilities within the Easement Area(s); and installing open space improvements within the Easement Area(s). The Temporary Construction License automatically terminates without further action by Grantor or Grantee upon the issuance of a Certificate of Occupancy from the City for the vertical development contained in the Site Development Plan triggering the granting of this Open Space Easement by Grantor to Grantee pursuant to the Development Agreement.

Grantor further understands and agrees that with respect to the Property, all laws, ordinances, and regulations pertaining to streets, sidewalks, and public places shall apply so that the public use of the Easement Area(s) is consistent with the use and enjoyment of any dedicated public right-of-way.

The Grantor further grants to the Grantee the right of ingress to and egress over and across adjacent lands owned by Grantor by such route or routes as shall occasion the least practical damage and inconvenience to the Grantor, for the purpose of constructing, repairing, maintaining and operating the Easement Area(s) if deemed necessary by Grantee.

Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable State or federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver District Court in the City and County of Denver, Colorado.

Grantor shall indemnify, defend and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses arising from the environmental condition of the Easement Area(s), including the existence of any hazardous material, substance or waste.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto and all covenants herein shall apply to and run with the land.

[SIGNATURE PAGE FOLLOWS]



Exhibit A to  
Permanent Easement for Privately Owned Open Space  
Legal Description of Easement Area(s)

**[TO BE INSERTED]**



Exhibit “C” to  
4201 ARKANSAS Development Agreement

Sample Transportation Demand Management Plan

TRANSPORTATION DEMAND MANAGEMENT PLAN

[Development Name]

[Address]

[Development] is a proposed new \_\_\_\_\_ development consisting of \_\_\_\_\_, located at \_\_\_\_\_ in Denver, Colorado. Pursuant to \_\_\_\_\_ [Rule or Ordinance], new development must provide a Transportation Demand Management Plan (“TDMP”).

A TDMP is a site-specific plan that identifies transportation demand management strategies that encourage residents and employees to use alternative modes of transportation such as public transportation, walking, biking, or ridesharing, in lieu of driving alone in a single-occupant vehicle (SOV) during peak traffic hours. Ultimately, a TDMP is designed to encourage the use of alternative modes of transportation and reduce daily vehicle trips. A successful TDMP will increase the availability, awareness, and use of public transit, ridesharing, car-sharing, biking, bike-sharing, and walking by generating awareness at the project level. It will also educate residents and employees on alternatives available to traveling by SOV. By reducing SOV trips, the TDMP will:

- Reduce the strain on existing transportation infrastructure, helping it last longer;
- Reduce the demand for new roads and parking, freeing up resources and space for jobs, housing, parks and other amenities;
- Maximize the use of existing public transit services and investments;
- Support the economy with increased commute flexibility and increased access to and visibility of local businesses;
- Maintain a high quality of life and mobility in surrounding neighborhoods;
- Improve the environment by reducing emissions of greenhouse gases; and
- Improve public health by reducing emissions of particulate matter and offering transportation options that increase physical activity.

The \_\_\_\_\_ is within walking distance of the \_\_\_\_\_ development at \_\_\_\_\_ away. The \_\_\_\_\_-line provides access to the entire Denver metro area. The [Development] TDMP will encourage residents and employees to use both stations, resulting in a corresponding decrease in the number of SOVs on Denver’s streets.

The TDMP for [Development] will increase resident and employee awareness and use of alternative modes of transportation by planning the implementation of the following:

1. Ride Sharing
  - a. Social media platforms (e.g. Facebook, Website) will be utilized by property management to encourage ride sharing. \_\_\_\_\_ will be encouraged to car pool with others to minimize the use of SOVs as they travel.
  - b. Information on Denver's RideShare programs will be made available to residents and employees and the use of these programs will be encouraged.
  - c. \_\_\_\_\_ parking spaces in the \_\_\_\_\_ have been designated for alternative-fuel vehicles.
  - d. On-site vehicular parking will be charged separately from the \_\_\_\_\_ rent.
2. Bicycles
  - a. Secured on-site bicycle storage will encourage residents to use bicycles for personal transportation as an alternative to motor vehicles. \_\_\_\_\_ secured bicycle storage spaces will be provided on the property. This represents a ratio of \_\_\_\_\_ bike racks for every \_\_\_\_\_.
  - b. The development includes an off-street bike route connector \_\_\_\_\_ (see graphic).
  - c. [A \_\_\_\_\_ sf designated bike repair shop and wash-down room will be provided in the \_\_\_\_\_. – Optional]
3. Transit
  - a. RTD schedules, maps, and other alternative modes of transportation will be made available to \_\_\_\_\_.
  - b. A map will be posted on the property showing the most convenient pedestrian or bicycle routes to the two light rail stations near the property.
  - c. The location of the nearest bus shelter locations will be posted on the property.
  - d. [Optional - The Owner will provide RTD flex passes for all on-site employees \_\_\_\_\_.]
4. Walking
  - a. Property management will post and maintain information on nearby commercial and dining facilities within walking distance to encourage patronage.
  - b. The development will include high-quality pedestrian environments along \_\_\_\_\_, with accessible sidewalks, pedestrian lighting, landscaping and furnishings.
  - c. The development will include attractive and secure waiting/drop-off areas at building entrances for people walking to and from the property.
5. [Optional - Pre-paid 3-year Membership with Transportation Solutions (TS). With our membership, Transportation Solutions has offered the following program elements for [Development] \_\_\_\_\_.]

Exhibit "F" to  
4201 ARKANSAS Development Agreement

Form of Permanent Non-Exclusive Easement for Detention/Water Quality

Project Number:

PERMANENT NON-EXCLUSIVE EASEMENT

This Permanent Non-Exclusive Easement ("Easement"), made \_\_\_\_ Day of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_ whose address is \_\_\_\_\_ ("Grantor(s)" or "Owner(s)") and the CITY AND COUNTY OF DENVER, a home rule city and municipal corporation of the State of Colorado, whose address is 1437 Bannock Street, Denver, Colorado 80202 ("City" or "Grantee")

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

1. The Grantor(s) are the owner of the property commonly known and addressed as \_\_\_\_\_, (the "Property"), described in Exhibit A attached hereto and incorporated herein, which will be served by the following privately owned wastewater facilities: [sanitary sewer, storm sewer, permanent aboveground detention/water quality pond, permanent underground detention/water quality structure or vault with or without pump(s) and storm sewer outlet pipe] (collectively the "Facilities").
2. The Grantor(s) are jointly and severally responsible for the maintenance and service of such Facilities to ensure conformance with all applicable plans and standards approved by the City.
3. The Grantor(s) hereby grant(s) and convey(s) a permanent non-exclusive easement to the City under, in, upon, across and over the land described in Exhibit B attached hereto and incorporated herein ("Easement Area"), for the purpose of maintaining, repairing, and servicing the Facilities if required as set forth herein, together with any and all rights of ingress and egress, necessary or convenient to the City to accomplish such purposes.
4. The Grantor(s) shall pay for and be responsible for all costs to construct, reconstruct, repair and maintain the Property, the Easement Area and all Facilities within the Easement Area to ensure conformance with all applicable plans and standards relating to the Facilities approved by the City. The City shall not be responsible for any construction, repairs, maintenance, cleaning, snow removal or any other services on the Property, within the Easement Area or of the Facilities.

5. If, in the sole opinion of the City's Manager of Public Works, Facilities are not properly maintained, constructed, repaired, or serviced by Grantor(s), the City shall give notice to the Grantor(s) and if maintenance, construction, repairs, servicing, or corrections are not made within the time designated in such notice, the City is authorized, but not required, to make or have made maintenance, construction, repairs, servicing or corrections. If the City performs such maintenance, construction, repair, servicing or correction, the City shall charge and collect the cost thereof from the Grantor(s). However, in cases of emergency, as solely determined by the City's Manager of Public Works, the City may choose to make immediate maintenance, servicing, repairs or corrections and to collect the cost thereof from the Grantor(s) without notice. Without limiting any other rights, remedies, or powers of the City, the costs to discharge Grantor's obligations to the City pursuant to this paragraph if unpaid are subject to filing of a Lien on the Property according to Colorado law, including C.R.S. 38-22-101 et. al.

6. The Grantor(s) shall in no way consider or hold the City or its personnel liable for trespass in the performance of any of the maintenance, construction, repairing, servicing, correcting or other activities referred to herein. Grantor(s) hereby agree to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Easement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City. Grantor(s) duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Grantor(s) duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages. Grantor(s) will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy. This defense and indemnification obligation shall survive the termination of this Easement.

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

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

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

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

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

If to Grantor(s):       Company  
  Address  
  Address

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

[Signatures follow on next page.]

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

GRANTOR(S):

\_\_\_\_\_, a \_\_\_\_\_

BY: \_\_\_\_\_

Name, Title

STATE OF            )  
                                  ) ss  
COUNTY OF        )

The forgoing instrument was acknowledged before me the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ for \_\_\_\_\_, a \_\_\_\_\_ as the Grantor(s).

Witness my hand and official seal

My Commission expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public

\_\_\_\_\_

Address

EXHIBIT A  
Property Legal Description  
[To Be Inserted]

EXHIBIT B  
Easement Area Legal Description  
[To Be Inserted]