

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (“Agreement”) is made and entered into as of the Effective Date, as defined below, by and between DIBC HQTS, LLC, a Colorado limited liability company (“Owner”) with a principal place of business at 8480 Tower Road, Commerce City, CO 80022. and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado (“City”), with a principal place of business at 7887 E. 60th Avenue, Commerce City, CO 80022.

WITNESSETH:

WHEREAS, except for public streets and highways the Owner is the owner of the property described in **Exhibit A**, to this Agreement (“Property”), and has filed a petition to annex the Property into the City;

WHEREAS, the Owner desires, for the future development of the Property, that the City provide municipal services to the Property and that the Property be annexed to the City;

WHEREAS, the City wishes to control its growth in a planned and orderly fashion, maintaining and improving its quality of life and its ability to provide and enhance environmental amenities, services, and local opportunity for its residents;

WHEREAS, the City desires that the Property be developed within the City’s boundaries and that the City provide municipal services and receive revenues from development occurring on the Property;

WHEREAS, the Owner acknowledges that the need for conveyance and dedication of public rights-of-way and other land as contemplated in this Agreement are directly related to and generated by development intended to occur within the Property and that no taking or damage to the remainder of the Property thereby will occur requiring any compensation;

WHEREAS, the Owner acknowledges that the development of the Property may require the design and construction of, or contribution to the design and construction of certain public improvements, by the Owner related both in nature and extent to the impact of the development of the Property;

WHEREAS, the Owner and the City are entering into this Agreement in furtherance of the annexation of the Property;

WHEREAS, the Owner and the City recognize that the annexation of the Property is contingent upon the approval of related land use applications and related real property transactions and therefore, this Agreement encompasses contingent and conditional language regarding all of the same; and

WHEREAS, it is in the public interest for the parties to enter into a written agreement regarding the matters addressed in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

“Agreement” means this Agreement.

“Effective Date” means the effective date of action by the City Council approving the ordinance annexing the Property except as expressly specified in this Agreement.

“GID” means any General Improvement District organized within the boundaries of the City.

“Legal Challenge” means any legal proceeding by a third party that directly challenges the approval of the annexation of the Property, the Zoning Ordinance, the Vacation Ordinance, this Agreement or any of the City’s ordinances, resolutions or other approvals approving any of the foregoing or the submission by any third party of a petition for a referendum seeking to reverse or nullify any of such ordinances.

“Property” means the real property described and depicted on **Exhibit A**.

“SACFPD” means South Adams County Fire Protection District.

“SACWSD” means South Adams County Water and Sanitation District.

“Vacation Ordinance” means the City ordinance #V-093-24 approving the Himalaya Street vacation.

“Zoning Ordinance” means the City ordinance #Z-705-99-00-09-24 approving the requested zoning contemplated in Article 13 and attached in **Exhibit B**.

ARTICLE 2. ANNEXATION

2.1 Annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act, C.R.S. § 31-12-101 *et seq.*, and all relevant provisions of the City Charter and the Commerce City Revised Municipal Code (the “Code”). The Owner agrees to cause a properly prepared and executed petition for annexation of the Property to be filed with the Clerk of the City and to initiate and, to the best of its ability, complete such annexation and cooperate in every way reasonably possible to facilitate the annexation of the Property by the City.

2.2 Owner agrees to not sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of the City.

ARTICLE 3. RIGHTS-OF-WAY, PUBLIC LAND CONVEYANCE AND PUBLIC IMPROVEMENTS

3.1 *Conveyance of rights-of-way, easements and public land.* At the request of the City, the Owner will convey from the Property at no cost to the City, the real property identified in Section 3.2 below. All such conveyances shall be free and clear of liens and encumbrances, unless otherwise accepted by the City, and in such form as acceptable to the City. The City may require further dedication of rights-of-way, easements and public land during future development of the Property, if such request is legally related to the impacts of such future development.

3.2 Upon final design of 88th Avenue and the E470 interchange, right-of-way dedication will be required in the Development Agreement along the northern frontage of the Property, which current owned by DIBC HQTS LLC C/O L. C. Fulenwider Inc. (Parcel 0172300000265), from Himalaya Street to the E470 interchange (approximately 684 feet east of the existing centerline of Himalaya Street).

3.3 *Public improvements.* The Owner shall be responsible for the design and construction of off-site and on-site public improvements necessary for the development of the Property, including without limitation transportation, water, sanitary sewer, storm sewer, and drainage improvements. Additional transportation improvements may be required of the Owner for the development of the Property, including without limitation, off-site transitions, turn lanes, raised landscape medians, traffic signals, pedestrian crossings and underpasses, intersection improvements, roadway connections, or any other improvements required by the City for development of the Property. If any of the improvements are constructed by the City, which improvements the Owner otherwise would have been responsible for in whole or in part, at any time including prior to the development of the Property, the Owner will reimburse the City for the actual, reasonable and documented cost of the design and construction of such improvements brought to present day value at the time of payment (using the Construction Cost Index) and never less than the actual cost of the design and construction. Such reimbursement shall be payable at the time of development of the Property, unless deferred by separate agreement, or within one (1) year of the City's demand for payment, whichever is earlier. The cost of designing and constructing all of the aforementioned public improvements shall be borne by the Owner, and the construction thereof shall be at the sole cost, risk and expense of the Owner. All such public improvements must be built or completed in accordance with the public way permit requirements, City of Commerce City Engineering Construction Standards and Specifications and such other adopted standards, as applicable and as may be amended from time to time.

3.4 *Specific improvements.* Without limitation, the Owner specifically is responsible for the contribution to cover 25% of the engineering design of the future interchange of East 88th Avenue and E-470 ("Interchange Design Costs"), up to, and in no event more than, Seven Hundred Ninety-Five Thousand U.S. Dollars (\$795,000.00) ("Interchange Payment"). The City shall submit a request to Owner for payment of the Interchange Payment with at least one (1) year notice of the deadline to remit the Interchange Payment to the City, including instructions on how to remit such payment. Such request for the Interchange Payment shall include invoices evidencing the final Interchange Design Costs.

3.5 *Maintenance of rights-of-way, easements and dedicated public land in accordance with City ordinances.* For the period during which any such rights-of-way, easements or public land has been conveyed but has not been improved, the Owner will maintain any such unimproved rights-of-way, easements and/or public land pursuant to maintenance requirements of the City for unimproved land.

ARTICLE 4. REIMBURSEMENT AGREEMENTS

To the extent public improvements (such as storm drainage facilities, street lighting or other public improvements) are oversized or extended onto adjacent property by the Owner for a benefit accruing to other parties, said improvements may be eligible for reimbursement. If said improvements qualify for reimbursement through the City, the Owner shall be required to enter into a Reimbursement Agreement with the City in accordance with the requirements of the City. In the case of water or sewer, eligibility for reimbursement, if any, must be coordinated and approved by SACWSD.

ARTICLE 5. DEVELOPMENT AGREEMENT

At the time the Property is developed, the Owner shall execute a development agreement with the City defining roadway construction, storm drainage facilities, landscaping requirements and any other dedicated public improvements. Those streets, storm drainage, landscaping, and other dedicated public improvements constructed by the Owner, by any district, or party under contract with the Owner, shall initially be accepted by the City upon completion of construction in accordance with City standards or other adopted standards, or after correction pursuant to those standards of any defects in said streets, storm drainage, landscaping, or other public improvements, whichever date shall last occur. The Owner shall warrant construction of said streets, storm drainage, landscaping and other public improvements for one year after initial acceptance by the City at which time the City will commence maintenance of said streets, storm drainage, and other public improvements. The Owner shall maintain all landscaping improvements.

ARTICLE 6. WAIVER OF PRE-EXISTING VESTED RIGHTS

With the exception of those vested rights listed in Article 7, below, by entering into this Agreement, the Owner of the Property does hereby agree to WAIVE, RELEASE, AND FOREVER DISCHARGE any and all pre-existing vested property rights on and in the Property, regardless of whether such vested property rights arise pursuant to a grant or approval from a governmental entity, by statute, or from common law. Any and all such vested property rights are extinguished upon the effective date of annexation of the Property. Any future claim to exercise a previously existing right or entitlement based thereon shall be void ab initio. Notwithstanding the foregoing, Owner is permitted to continue currently existing active land uses inconsistent with the initial zoning by the City and limited to their actual location on the Property at the time of annexation if certified as such by the Director of Community Development prior to annexation. In such an event, those certified land uses will be considered prior legal but non-conforming uses. Through this Agreement, the Director of Community Development hereby certifies that the existing agricultural uses on the Property may remain upon annexation of the Property.

ARTICLE 7. VESTED RIGHTS

7.1 *Site Specific Development Plan.* This Agreement, together with the Zoning Ordinance, constitutes an approved “site-specific development plan” as defined in Colorado Revised Statutes §§ 24-68-101, *et seq.* (“Vested Property Rights Statute”). Each final subdivision plat, development plan, and final PUD development permit, and each amendment to any of the foregoing (as used in this Article 7, each is a “Development Application”), that Owner submits to the City subsequent to the Effective Date for the Property shall, if Owner so requests, be processed as a “site specific development plan” as defined in the Vested Property Rights Statute and the City’s Land Development Code. The vested property rights created in connection with such approved Development Application shall be supplemental and in addition to those property rights initially vested through this Agreement as of the Effective Date and shall be vested pursuant to the Vested Property Rights Statute and Land Development Code.

7.2 *Compliance with General Regulations.* The establishment of vested property rights pursuant to this Agreement shall not preclude the application on a uniform and non-discriminatory basis of City regulations of general applicability (including, but not limited to, building/existing building, residential, fire, plumbing, electrical, property maintenance, plumbing and private sewage, fuel gas, energy conservation and mechanical codes, the City Code, and other City rules and regulations) or the application of state or federal regulations, as all of such regulations exist on the Effective Date or may be enacted or amended after the Effective Date. The Owner does not waive its right to oppose the enactment or amendment of any such regulations.

7.3 *Property Rights Vested.* Subject to the terms, conditions and limitations of the Vested Property Rights Statute and except as otherwise restricted in this Agreement, the rights identified below shall constitute the only vested property rights under this Agreement:

(a) the right to develop, plan, and engage in land uses within the Property in the order, at the rate and at the time of Owner’s preference and pursuant to the terms of the Zoning Ordinance, including the types and variety of uses and products and intensity of use set forth therein, and as described in any Development Application processed and approved as a site-specific development plan pursuant to this Agreement;

(b) the right to commence and complete development of the Property with conditions, standards and dedications which are no more onerous than those imposed by the City upon other developers in the City on a uniform and consistent basis, except to the extent such conditions, standards, and dedications conflict with this Agreement, in which event this Agreement shall control; and

(c) the right to have all applications for subsequently required Development Application as a site-specific development plans, which, if approved, shall establish vested property rights pursuant to the Vested Property Right Statute.

Except as the Vested Property Rights Statute expressly provides otherwise, no initiated or referred action (including zoning, subdivision, land use or other legal or administrative action) which would directly or indirectly have the effect of materially and adversely altering, impairing, preventing, diminishing, imposing a moratorium on development, delaying or otherwise adversely affecting any of the Owner's rights set forth in Section C of this Article 7 shall apply to or be effective against the Property.

7.4 *Term.* The rights vested pursuant to this Agreement and the Zoning Ordinance shall be vested for a period of fifteen (15) years from the Effective Date. Additional extensions of this period of vesting for such approval may be granted by the City in its sole discretion, pursuant to the then-existing provisions of the Commerce City Revised Municipal Code, if requested by the Owner.

7.5 *Subsequent Detailed Plan Review.* Notwithstanding the foregoing vested rights, Owner acknowledges that the City reserves its customary legal discretion over the subsequent detailed development plan, platting, and construction stages, subject to application of the City's applicable codes and regulations of general application.

ARTICLE 8. STATUTORY DISTRICTS

8.1 *Creation of Districts.* Subject to any City moratorium on metro districts and the City's rights of review and approval or denial under the laws of the State of Colorado, the City may approve, but shall not be required to approve, the creation of one or more districts including, but not limited to, special districts, general improvements districts, and metropolitan districts, authorized pursuant to Title 31 and Title 32 of the Colorado Revised Statutes as the same may be amended from time to time ("District" or "Districts"), as requested by the Owner for purpose of the acquisition, construction, installation, financing, and maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. Such capital improvements and facilities may include all improvements permitted by said Titles 31 and 32 including, but not limited to: water and sanitary sewer lines; storm drainage and detention improvements; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, street lights, safety protection improvements and other transportation facilities; and parks, trails and recreation facilities. Notwithstanding the foregoing, no District will be approved where ten percent or more of the property within the geographical boundaries of the District will be developed or is proposed to be developed for residential purposes. Any approval of compliant Districts may include the following conditions, unless waived by the City, which waiver shall not be unreasonably withheld.

8.2 No District created as a consequence of this Agreement shall levy, charge, or collect a sales or use tax.

8.3 Districts shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.

8.4 All improvements constructed by any District shall be designed, constructed, and warranted in accordance with the standards and specifications of the City.

8.5 The City shall not incur any expense in the formation or operation of the District or in the retirement of capital obligations related thereto.

8.6 The Districts, when organized, shall not exceed the boundaries of the Property, nor have its powers altered in any way, without the prior approval of the City.

8.7 *Maintenance Fee and Charges of District.* Except as otherwise provided, nothing in this Agreement shall be construed to prohibit or preclude the Districts from establishing, fixing, levying, charging or collecting any rate, fee or charge, in addition to the rates, fees and charges to be collected by the City.

ARTICLE 9. MUNICIPAL SERVICES

9.1 *General.* The City shall provide to the Property the usual and customary municipal services currently provided by the City within its municipal limits generally, in accordance with the ordinances and policies of the City. The Property shall be subject to all policies, ordinances, rules, regulations, platting restrictions and permitting procedures currently in effect or enacted in the future to allocate or regulate the use of the City’s resources generally throughout the City.

9.2 *Electric, Natural Gas, Telephone, Cable TV and Other Utility Services.* The City does not provide electric, natural gas, telephone, or cable TV facilities or services. Such services are available within the City from private entities. The extension of such services to the Property is not the obligation or responsibility of the City.

9.3 *Transportation.* Once constructed and accepted, the City shall maintain duly dedicated and accepted public streets and roads within its municipal boundaries which serve the Property, both on and off-site, upon the same basis as such services are provided to other property within the City.

ARTICLE 10. IMPACT FEES AND OTHER CITY FEES

10.1 In connection with the development of the Property, the Owner will pay City impact fees and other City fees adopted by the City, and as may be amended from time to time, and uniformly charged for other property located in the general area for transportation, drainage, parks, trails and recreation facilities, water acquisition, fire and emergency services, and other purposes authorized by law. All impact fees will be assessed in accordance with applicable law at the time that each becomes due. Nothing herein shall limit the authority to modify, amend, or add to the City’s impact fees or other fees.

10.2 *Road Impact Fee.* The Owner will pay the City road impact fee in accordance with the requirements of the City, if the Property is located within the road impact fee area.

10.3 *Drainage Impact Fee.* The Owner will pay the City a drainage impact fee in the amount specified by City ordinance as applicable to the Property.

10.4 *Public Parks and Recreation Facilities Impact Fee.* The Owner will pay the City impact fee for parks, trails and recreation facilities or dedicate land for parks, trail, and recreation facilities in agreement with the City and in accordance with the requirements of the City.

10.5 *Water Impact Fee.* The Owner will pay the City impact fee for water in accordance with the requirements of the City.

10.6 *School Capacity Fee.* In accordance with the specifications of the School Capacity Fee, as established by School District 27J Capital Facilities Fee Foundation, the Owner will pay said fee for purposes of school capital construction. The Owner will execute a Participation Agreement providing for the payment of Capital Facility Fees. As said fees are adopted or amended by School District 27J Capital Facilities Fee Foundation or, as applicable, by the City of Commerce City, the Owner will pay the fee that is consistent with the adopted fee schedule.

10.7 *Fire and Emergency Services Impact Fee.* The Owner will pay the City Impact fee in accordance with requirements of the City.

10.8 *Fees in Lieu of Land Dedication for Schools.* In lieu of land dedication required by City ordinance for school purposes, the City may require the Owner to pay the fees in lieu of land dedication for schools according to the City's adopted schedule. As fees in lieu of land dedication for schools are adopted or amended by the City, the Owner will pay the fee that is consistent with the adopted fee schedule.

ARTICLE 11. WATER AND SEWER

11.1 Water and sewer services shall be provided by SACWSD and shall be agreed upon with SACWSD prior to development of the Property as a condition of development. The Owner must secure adequate water and sewer services and may be required to enter into a Water Resources Agreement with SACWSD to meet the contemplated requirements of the applicant's development prior to City approval of any development application. No development application shall receive approval from the City until such requirements have been met. Adequacy of water and sewer services shall be determined by the City and SACWSD. Future changes to the proposed development may require an amendment to the Water Resources Agreement in which event adequate water resources must be secured by the Owner prior to City approval of any permits for development.

11.2 Water and sewer services must be obtained in accordance with the rules and regulations of SACWSD as the same exist at the time application is made to SACWSD for water and sewer services.

ARTICLE 12. URBAN GROWTH BOUNDARY

By allowing annexation of the Property, the City does not guarantee that the Property is located within the Urban Growth Boundary/Area, as defined by the Denver Regional Council of Governments, or other boundaries legislatively determined.

ARTICLE 13. FIRE PROTECTION

The Property is already incorporated into the service area of the SACFPD.

ARTICLE 14. ZONING

14.1 Zoning of the Property shall be accomplished in accordance with the City's Codes, regulations, and standards and in accordance with Colorado Revised Statutes, as may be amended from time to time. The Property shall be subject to all applicable master plans adopted by the City at the time of subdivision or any future subdivision of the Property. Where annexation is conditioned on zoning, any such condition shall apply only to initial zoning at the time of annexation. The City reserves the right to rezone the Property at a future date. The zoning and use of land within the Property remains subject to the police power and legislative authority of the City.

14.2 The Owner hereby requests "PUD, Planned Unit Development" zoning, in accordance with the site plan map attached hereto as **Exhibit B** and incorporated herein, and with the zoning categories contained in Section(s) 21-3251 and Section 21-3350 of the Code.

14.3 *Effect of Failure to Zone.* In the event that the City Council fails or refuses to enact an ordinance or ordinances zoning the Property as above described within eighty-nine (89) days of the second reading of the annexation ordinance, then the annexation ordinance shall become null, void, and of no effect, and the annexation map and plat of the Property shall not be filed for record with the Adams County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2).

14.4 *Challenge to Zoning Ordinance.* Should the Zoning Ordinance be challenged by citizen initiative, referendum, or otherwise, and should any such challenge result in the invalidity of the annexation or zoning ordinance(s) upon entry of a final order of court which is unappealable or which the parties have elected not to appeal, then, similarly, the annexation of the Property shall be null, void and of no effect, and the annexation map and plat shall not be filed with the Adams County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2) and if already filed, the City shall promptly act to disconnect

the Property. In that circumstance, the parties agree that the procedure set forth in C.R.S. § 31-12-501, *et seq.*, shall apply, exclusive of any other disconnection procedure. In the event of invalidity of the annexation ordinance(s) pursuant to any of the conditions described in this Section, such invalidity shall not be deemed a breach of the Agreement by either party, and the parties shall be deemed released from further obligations hereunder, provided that Owner shall remain responsible for the cost of legal defense pursuant to Articles 17 and 18 hereof.

ARTICLE 15. DEVELOPMENT

15.1 *Application of City Requirements.* The Property shall be developed in general conformity with City’s current Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements, including without limitation, those pertaining to zoning, subdivision, streets, storm drainage, utilities, landscaping, parks and open spaces, and flood control. The City may amend and apply to the Property the City’s Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements from time to time as needed to address changing effects upon the City’s infrastructure, administration and delivery of governmental services as a result of development occurring within the City so long as the same are generally applicable and uniformly applied or enforced to all similarly situated property within the City.

15.2 *Subdivision Required.* Any subdivision of the Property following annexation shall be in accordance with City subdivision and other applicable regulations in effect at the time application is made for subdivision approval. In addition to the improvements required by this Agreement, the specific Public Improvements required in connection with such development shall be determined during the subdivision process, in accordance with applicable regulations of the City.

15.3 *Annexation and Zoning Subject to Legislative Discretion.* The Owner acknowledges that the annexation and subsequent zoning of the Property are subject to the legislative discretion of the City Council. No assurances of annexation or zoning have been made or relied upon by the Owner. In the event that the City Council, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the City in accordance with state law, as may be appropriate.

15.4 *Himalaya Vacation.* The City acknowledges that the Owner’s annexation, zoning, and development of the Property necessitates the vacation of Himalaya Street as contemplated by the Vacation Ordinance. Owner acknowledges that approval of the Vacation Ordinance requires Owner to enter into an agreement with the City and County of Denver’s Department of Aviation (“DEN”) regarding access to a parcel of land lying adjacent to the Property to south. In conjunction with the recordation of the Vacation Ordinance, Owner hereby agrees to record a Memorandum of Agreement (“DEN MOA”) executed between Allied Waste Systems of Colorado, LLC or one of its affiliates and DEN and to provide the City with an executed copy within forty-eight (48) hours of execution.

ARTICLE 16. GENERAL IMPROVEMENT DISTRICT

The Property is not located within any GID service area at the time of annexation.

ARTICLE 17 CONDITIONS PRECEDENT TO LEGAL EFFECTIVENESS OF ANNEXATION.

17.1 The Parties acknowledge and agree that the legal effectiveness of the annexation of the Property pursuant to Section 113(2)(b) of the Annexation Act is subject to the terms of this Article 17. The City shall not file the ordinance annexing the Property or any maps with the Adams County Clerk & Recorder except in accordance with this Article 17. The Owner has the sole, exclusive and unilateral right to withdraw the annexation petition for the Property and by so notifying the Clerk of the City in writing at any point prior to the latest to occur of:

- (i) the date of City Council action finally approving the ordinances annexing the Property;

- (ii) the date of City Council action finally approving the Zoning Ordinance;
- (iii) the date of City Council action finally approving an ordinance ratifying this Agreement;
- (iv) the date of City Council action finally approving the Vacation Ordinance;
- (v) the date of execution of the DEN MOA;
- (vi) the closing of the conveyance of the Property to Allied Waste Systems of Colorado, LLC or one of its affiliates;
or
- (vii) the final, non-appealable resolution of any Legal Challenge submitted within sixty (60) days of the date of City Council action finally approving the ordinances annexing the Property, the Zoning Ordinance, Vacation Ordinance or the ordinance ratifying this Agreement.

Upon satisfaction of all of the above, then the City Clerk may proceed with recordation of the Annexation Ordinance, in accordance with Section 113(2)(b) of the Annexation Act, the Zoning Ordinance, the Vacation Ordinance, and this Agreement. Notwithstanding the conditions subsequent, nothing herein shall be construed so as to delay, suspend or otherwise alter the mandatory statutory periods for any Legal Challenge to the Annexation Ordinance, the Zoning Ordinance, or this Agreement. Further, it is expressly understood that this Agreement shall not expire or terminate during the pendency of any Legal Challenge and unless earlier terminated or modified by a written amendment signed by all parties hereto. Further, the City and Owner shall cooperate to cure the legal defect and to pursue annexation and/or zoning of the Property or portion thereof in a manner that most fully implements the intent and purpose of this Agreement and are acceptable to City and Owner in their reasonable discretion.

17.2 In the event of a Legal Challenge, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the Final Outcome of the challenge except as specified herein. "Final Action" means an action from which no appeal can be made or the time to appeal has expired. If the challenge results in the disconnection of the Property from the City, then this Agreement shall be null and void and of no further effect except as specified herein. The Owner and the City shall cooperate to cure any legal defects that resulted in any challenge, including any challenge that results in disconnection of the Property.

ARTICLE 18. Legal Challenge Costs and Fees

18.1 Owner understands and acknowledges that the annexation and zoning of the Property may be subject to Legal Challenge. In the event of Legal Challenge, the City will incur costs and expenses related to defense of same, including reasonable attorney's fees, filing fees, and court costs. Owner shall pay all reasonable costs and expenses incurred by the City in any defense of the Legal Challenge. The City shall reserve and retain the right to repeal, modify, or amend any or all ordinances or resolutions annexing or zoning the Property, specifically excluding any action that would conflict with the terms of this Agreement, and shall reserve and retain the right to settle, prosecute, litigate, and defend any such action in any manner and by any method that the City deems appropriate, desirable, or in its best interests. The City shall, to the extent practicable and convenient, consult with and advise the Owner of the progress of any defense.

18.2 Owner understands and acknowledges that the annexation and zoning of the Property may be subject to public referendum. In the event of the filing of a public referendum, the City may incur costs and expenses related to conducting a municipal election, including but not limited to costs and expenses of publication, printing, and mailing, reasonable attorney fees, and the costs of retaining the services of election judges. Owner shall pay all reasonable costs and expenses

incurred by the City in conducting such election, regardless of outcome; provided, however, that the City shall reserve and retain the right to repeal, modify, or amend any or all ordinances and resolutions annexing or zoning the Property or to take any other action the City deems appropriate, desirable, or in its best interests in the handling, consideration of the referendum petition and referendum election.

ARTICLE 19. MISCELLANEOUS

19.1 *Recordation; Covenants; Assignment.* This Agreement shall be recorded with the Clerk and Recorder of Adams County. The provisions of this Agreement shall constitute covenants and servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the Property, the Owner, its heirs, successors and assigns (including subsequent owners of the Property or any portion thereof). Except as provided in this Agreement, Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located upon or within the Property. Any such assignment or transfer must comply with the provisions of City of Commerce City Municipal Code, including the Commerce City Land Development Code, as amended from time to time. The City hereby acknowledges that, in conjunction with the conveyance of the Property to Allied Waste Systems of Colorado, LLC or one of its affiliates as contemplated in Article 17.1 herein, Owner will assign this Agreement to Allied Waste Systems of Colorado, LLC or one of its affiliates and therefore, DIBC HQTs, LLC shall have no further obligations or responsibilities regarding this Agreement. The City hereby affirms that such assignment is pursuant to the applicable provisions of the City of Commerce City Municipal Code and the Commerce City Land Development Code and that Owner shall not be required to obtain any approval or consent by the City for the same.

19.2 *Costs.* The Owner will bear all costs and fees necessary for or associated with the annexation, zoning, inclusion in any district, and any development approval in connection with the Property, including without limitation the annexation petition, legal descriptions, maps, publication, notice, presentations, and recordation. The City shall not, in any event, be liable to the Owner for any costs or fees associated with the annexation or the failure of the annexation. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

19.3 *No Reliance.* The Owner acknowledges that the annexation and zoning of the Property are subject to the plenary legislative discretion of the City Council of the City of Commerce City and the rights of initiative and referendum reserved to its citizens. No assurances of annexation or zoning, or any development approval, incentive, or other condition, have been made to or relied upon by the Owner. If, in the exercise of its legislative discretion, and prior to the second reading of the annexation ordinance, the City fails to approve any proposed zoning, the sole and exclusive remedy of the Owner shall be the withdrawal of the annexation petition. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

19.4 *Police Power.* The Owner acknowledges that upon annexation the Property shall be subject to the same ordinances, rules, regulations, and policies as applicable to all other property presently situated within the boundaries of the City. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental, or police powers to promote and protect the health, safety, morals, or general welfare of the City or its residents. This Agreement shall not prohibit the enactment by the City of any fee, charter provision, ordinance, resolution, rule, or regulation which is of uniform and general application.

19.5 *Incorporation of Exhibits.* **Exhibit A** and **Exhibit B** to this Agreement is attached and incorporated in this Agreement by reference.

19.6 *Amendment of Agreement.* This Agreement may be amended or terminated only by mutual consent in writing by the City and the Owner, its heirs, successors or assigns following the public notice and public hearing procedures required for the original approval and execution of this Agreement.

19.7 *Remedies.* In the event of a breach of default in performance of this Agreement, which is not cured after 90 days' written notice, the parties shall have the remedies of specific performance. In no event shall the City be deemed to waive any rights existing or accruing to the City under the Colorado Governmental Immunity Act, nor shall the City be required to exercise its discretion to annex or zone the Property except as provided by law. In addition to any other remedies, the Owner acknowledges that the City may withhold or revoke any permits, approvals, or certificates for the Property or any structure or improvement within the Property as provided by law or in the event of a breach of this Agreement by the Owner. In no event may either party be entitled to claim or recover any form of damages, including economic, lost profits, punitive, or consequential.

19.8 *Costs & Attorney's Fees.* If the Owner is found, by final, non-appealable judicial action, to have breached this Agreement, the Owner shall pay the City's reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

19.9 *Titles of Sections.* The titles of the several articles and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

19.10 *Waiver.* The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, shall not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

19.11 *No Third-Party Beneficiary.* No third-party beneficiary rights are created in favor of any person not party to this Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their heirs, successors and assigns, including successor owners of any lot(s) or any other portion(s) of the Property, and nothing contained in this Agreement shall give rise to or allow any claim or right of action under this Agreement by any other person or party. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that the right of the Owner to receive, and the obligation of the City to pay, any credits or reimbursements hereunder shall accrue exclusively to the original parties to this Agreement, and shall not be assignable without the City's express written consent, and to any statutorily empowered districts created by the Owner pursuant to this Agreement, but to no others.

19.12 *Jurisdiction and Venue.* Jurisdiction and venue for any action to enforce or interpret the terms of this agreement shall be proper and exclusive in the District Court of Adams County, Colorado.

19.13 *Applicable Law.* The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement.

19.14 *Severability.* If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

19.15 *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument. Electronic and email ".pdf" signatures shall be deemed originals.

19.16 *Addresses for Notice.* Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City: Attn: City Manager
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

Copy to: City Attorney
7887 E. 60th Avenue
Commerce City, CO 80022

Owner: Attn: Rick Wells
DIBC HQTS, LLC
270 St. Paul Street, Suite 300
Denver, CO 80206

Copy to: Attn: Timothy Shea
Robinson Waters & O’Dorisio, P.C.
1099 18th Street, Suite 2600
Denver, CO 80202

(Signatures contained on next page(s).)

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be duly executed as of the day first above written.

CITY OF COMMERCE CITY, COLORADO

By: _____
Jason Rogers, City Manager

Date: _____

ATTEST:

Dylan A. Gibson, City Clerk

Approved as to form:

City Attorney

[Separate signatures are required of all owners, from persons with legal authority.]

OWNER:

Signature: H. Rickey Wells

Printed Name: H. Rickey Wells

Title: Sr. V.P. of L.C. Fulenwider, Inc. as Manager of DIBC HQTS, LLC

STATE OF)

) ss.

COUNTY OF)

The foregoing instrument was acknowledged before me this 31st day of July, 2024, by

H. Rickey Wells
[Insert name of signer]

As Sr. V.P. of L.C. Fulenwider, Inc. as Manager of DIBC HQTS, LLC
[Insert title/authority of signer and name of Owner]

Witness my hand and official seal. Notary Public: Laurie Kane

Address: 270 St. Paul St, Ste 300 Denver CO
Street Number/Name City State Zip Code 80202

(SEAL)

My Commission Expires: Jan 9, 2028



EXHIBIT A
Legal Description

A PARCEL OF LAND BEING A PART OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: FOR THE PURPOSE OF THIS DESCRIPTION THE BEARINGS ARE BASED ON THE CITY OF AURORA STATE PLANE COORDINATE POINTS, "JOG" AND "ELWAY" BEING NORTH 78°54'09" EAST;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 26;

THENCE SOUTH 00°32'48" WEST, 30.01 FEET, ALONG THE WESTERLY LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 26 TO THE SOUTHERLY RIGHT OF WAY LINE OF 88TH AVENUE AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 89°03'10" EAST, 1,583.13 FEET, ALONG SAID SOUTHERLY RIGHT OF WAY LINE TO A POINT OF NON-TANGENT CURVATURE ON THE CENTERLINE OF PROPOSED HIGHWAY E-470; THENCE ALONG SAID CENTERLINE ALONG THE ARC OF A CURVE TO THE RIGHT, WHOSE CENTER BEARS SOUTH 78°32'44" WEST, 7,639.44 FEET, THROUGH A CENTRAL ANGLE OF 11°27'16", AN ARC LENGTH OF 1,527.27 FEET, WHOSE CHORD BEARS SOUTH 05°43'38" EAST, 1,524.73 FEET TO A POINT OF TANGENCY;

THENCE CONTINUING ALONG SAID CENTERLINE SOUTH 00°00'00" WEST, 1,779.60 FEET TO THE NORTHERLY PROPERTY LINE OF THE CITY AND COUNTY OF DENVER AS DESCRIBED IN BOOK 3700 AT PAGE 545 OF THE ADAMS COUNTY RECORDS; THENCE SOUTH 89°28'25" WEST, 1,754.58 FEET ALONG SAID NORTHERLY PROPERTY LINE TO THE WESTERLY LINE OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 26;

THENCE NORTH 00°28'48" WEST, 665.19 FEET ALONG SAID WESTERLY LINE TO THE WEST ONE-QUARTER CORNER OF SAID SECTION 26;

THENCE NORTH 00°32'48" EAST, 2,621.62 FEET ALONG THE WESTERLY LINE OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 26, TO THE POINT OF BEGINNING, COUNTY OF ADAMS, STATE OF COLORADO.

EXCEPT THAT PORTION CONVEYED TO E-470 PUBLIC HIGHWAY AUTHORITY BY DEED RECORDED OCTOBER 12, 1995, IN BOOK 4605 AT PAGE 943, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND NO. TK-128 OF THE E-470 PUBLIC HIGHWAY AUTHORITY, BEING A PART OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

NOTE: FOR THE PURPOSE OF THIS DESCRIPTION THE BEARINGS ARE BASED ON THE CITY OF AURORA, STATE PLANE COORDINATE POINTS, "JOG" AND "ELWAY" BEING NORTH 78°54'09" EAST;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 26;

THENCE SOUTH 00°32'48" WEST, 30.01 FEET, ALONG THE WESTERLY LINE OF SAID SECTION 26 TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 88TH AVENUE;

THENCE NORTH 89°03'12" EAST, 606.65 FEET, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 00°56'48" EAST, 40.00 FEET;

THENCE SOUTH 84°57'38" EAST, 429.25 FEET;

THENCE SOUTH 56°43'47" EAST, 99.32 FEET;

THENCE SOUTH 18°17'33" EAST, 1,157.84 FEET, TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, WHOSE CENTER BEARS SOUTH 71°42'27" WEST, 1,424.13 FEET, THROUGH A CENTRAL ANGLE OF 18°17'33", AN ARC LENGTH OF 454.67 FEET, WHOSE CHORD BEARS SOUTH 09°08'46" EAST, 452.74 FEET, TO A POINT OF NON-TANGENCY; THENCE SOUTH 00°00'00" EAST, 1,250.00 FEET;

THENCE SOUTH 08°12'35" EAST, 224.29 FEET;

THENCE SOUTH 00°00'00" EAST, 131.40 FEET, TO A POINT ON THE NORTHERLY LINE OF DENVER INTERNATIONAL AIRPORT PROPERTY AS DESCRIBED IN BOOK 3700 AT PAGE 545;

THENCE NORTH 89°28'25" EAST, 149.85 FEET, ALONG SAID NORTHERLY PROPERTY LINE;

THENCE NORTH 00°00'00" WEST, 1,779.60 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT, WHOSE CENTER BEARS NORTH 90°00'00" WEST, 7,639.44 FEET, THROUGH A CENTRAL ANGLE OF 11°27'16", AN ARC LENGTH OF 1,527.26 FEET, WHOSE CHORD BEARS NORTH 05°43'38" WEST, 1,524.72 FEET TO A POINT OF NON-TANGENCY, SAID POINT BEING ON SAID SOUTHERLY RIGHT-OF-WAY LINE;

THENCE SOUTH 89°03'12" WEST, 976.48 FEET, ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

EXHIBIT B
Zoning Ordinance