

INCLUSION AGREEMENT
ECAGID-013-19 & ERAGID-013-19-
14-20 06-20

THIS INCLUSION AGREEMENT ("Agreement") is made and entered into this _____, by and between COHEN DENVER AIRPORT, LLC ("Owner"), the Commerce City E-470 Commercial Area General Improvement District ("ECAGID"), and the Commerce City E-470 Residential Area General Improvement District ("ERAGID").

WHEREAS, the Owner is the owner of the property commonly known as Hightower Ranch generally in the area bounded by E. 96th Avenue, Tower Road, E. 88th Avenue, and E-470 ("Property") and has filed petitions to include the Property, as more specifically defined in the petitions, into either the ECAGID and ERAGID in conjunction with the _____;

WHEREAS, the Agreement for Inclusion into the Commerce City E-470 Residential Area General Improvement District and the Commerce City E-470 Commercial Area General Improvement District dated November 4, 2013 ("2013 Inclusion Agreement") established certain requirements for the inclusion of property into the districts;

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:

I. Inclusion. Owner must include the Property in the ERAGID, for areas designated as residential in the zoning ordinance, and the ECAGID, for areas designated as commercial or mixed use in the zoning ordinance, and pay the joinder fees and taxes associated with joining each such GID, including inclusion fees in an amount equal to the property taxes that would have otherwise been imposed on the portions of the Property included in a GID if that property had been included in the original petition for such GID. All parts of the Property classified for property tax purposes as mixed use shall be condominiumized or split into separate ownership at the time of development; the portions of such Property classified for property tax purposes as commercial shall remain in or join the ECAGID and the portions of such Property classified for property tax purposes as residential shall join the ERAGID.

II. Owners Committee. Pursuant to the 2013 Inclusion Agreement, the ERAGID and the ECAGID have established or will establish a committee constituted of representatives as follows ("Owners Committee") for the purpose of providing recommendations to the ERAGID with regard prioritizing projects, other ERAGID First Priority Improvements, as defined in the November 4, 2013 Inclusion Agreement, and the funding of projects:

A. One representative of the ERAGID Petitioner, as defined in the 2013 Inclusion Agreement, shall serve on the Owners Committee from the date of the Inclusion Agreement until December 31, 2014, and thereafter, so long as the ERAGID Petitioner owns 50 acres or more of property in aggregate within the ERAGID and the ECAGID.

B. One representative of the ECAGID Petitioner, as defined in the 2013 Inclusion Agreement, shall serve on the Owners Committee from the date of the Inclusion Agreement until December 31, 2014, and thereafter, so long as the ECAGID Petitioner owns 50 acres or more of property in aggregate within the ERAGID and the ECAGID.

C. One representative of any other owner of property equal to or greater than 100 acres in aggregate of property that is zoned for residential development within the ERAGID and/or zoned for commercial development within the ECAGID.

III. Combined Mill Levy Target. In accordance with the 2013 Inclusion Agreement, the Owner agrees that the target mill levy for repayment of administration, operation and maintenance costs (the "Operating Mill Levy"), together with the mill levy imposed for debt service (the "Debt Mill Levy") is not planned to exceed 30

mills for residential property and 27 mills for commercial property (the "Combined Mill Levy Target") and that a Metro District Advance, Developer Advance or a City Advance, as defined in the 2013 Inclusion Agreement, may be reimbursed or a project forward funded by the issuance of debt to be repaid from an unlimited general obligation pledge if the debt is: (i) issued through a public offering or an institutional private placement; and (ii) with an independent feasibility analysis (e.g., bond counsel, City's outside advisor) demonstrating the ability of the ERAGID and/or the ECAGID to fund its operations from an Operating Mill Levy, together with a Debt Mill Levy that is not projected to exceed the Combined Mill Levy Target when imposed upon the assessed valuation in place and estimated for vertical development that may be either partially complete or near completion but that, at the time of issuance, is not yet included in the records of the county assessor because of the assessment cycle. Except as provided in this section, no pledge for a Debt Mill Levy for the repayment of any Metro District Advance, Developer Advance and/or City Advance by either the ERAGID or the ECAGID, together with an Operating Mill Levy, shall exceed the Combined Mill Levy Target.

IV. Miscellaneous.

A. Police Powers; Reservation of Authority. Nothing contained in this Agreement shall constitute or be interpreted as a waiver or abrogation of any powers of either GID. Nothing contained in this Agreement shall prohibit the enactment by either GID of any tax or fee that is of uniform or general application. All conditions of this Agreement are in addition to any and all requirements of any and all applicable state statutes and any laws or policies of either GID. The execution of this Agreement by each GID is subject to ratification by the governing bodies of each entity.

B. Covenants. 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.

C. Incorporation. The exhibits to this Agreement are attached and incorporated in this Agreement by reference.

D. Recordation. This Agreement may be recorded with the Clerk and Recorder of Adams County upon execution.

E. 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.

N. 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.

O. 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.

R. Venue. Venue for any action to enforce or interpret the terms of this Agreement shall be in the District Court of Adams County, Colorado.

S. Notice. Any notice given pursuant to this Agreement will be sent by certified mail, return receipt requested, overnight delivery service, or hand delivery. Notice to the Owner shall be given to *BRAD BROWN 9875 N LA MAR BLVD* or to any other address given in writing by an addressee to the other party. to any GID shall be given to the Executive Director and copied to the General Counsel. Notice, if given by mail, shall be deemed received three (3) days after mailing in accordance with this Section. *LV, NV 89149*

T. Applicable Law. The laws of the state of Colorado shall govern the interpretation and enforcement of this Agreement.

U. 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.

V. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Signature pages follow

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

**COMMERCE CITY E-470 COMMERCIAL AREA GENERAL
IMPROVEMENT DISTRICT, a body corporate**

By:

Brian K. McBroom, Executive Director

ATTEST:

Secretary

Approved as to form:

General Counsel

STATE OF COLORADO)

) ss.

COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Brian K. McBroom, as Executive Director of the Commerce City E-470 Commercial Area General Improvement District, a body corporate.

Witness my hand and official seal.				
Notary Public:				
Address:				
(SEAL)		Street Number/Name Zip Code	City	State
		My Commission Expires:		

**COMMERCE CITY E-470 RESIDENTIAL AREA GENERAL
IMPROVEMENT DISTRICT, a body corporate**

By:

Brian K. McBroom, Executive Director

ATTEST:

Secretary

Approved as to form:

General Counsel

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this 21st day of January, 2019, by Brian K. McBroom, as Executive Director of Commerce City E-470 Residential Area General Improvement District, a body corporate.

Witness my hand and official seal.		Notary Public:			
		Address:			
(SEAL)		Street Number/Name		City	State
		Zip Code			
		My Commission Expires:			

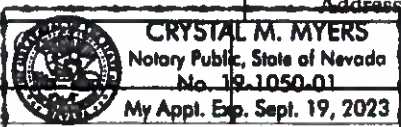
OWNER:

COHEN DEVER AIRPORT, LLC

By: Its Authorized Representative
[Signature]

STATE OF Nevada)
) ss.
COUNTY OF Clark)

The foregoing instrument was acknowledged before me this 21st day of January, ~~2019~~ ²⁰²⁰, by ~~Crystal Myers~~ as ~~Brad F. Burns~~ of Cohen Denver Airport, LLC, an Arizona limited liability company. Brad F. Burns as Authorized Representative

Witness my hand and official seal.		Notary Public:		<u>Crystal Myers</u> <u>Crystal M. Myers</u>	
		Address:		<u>7845 S Old Horn Ct. Las Vegas, NV 89149</u>	
		Street Number/Name		City	State
		Zip Code			

	<i>My Commission Expires:</i>	Sept. 19, 2023	
--	-----------------------------------	----------------	--