

**DENVER HIGH POINT AT DIA METROPOLITAN DISTRICT (“DHP”)
COLORADO INTERNATIONAL CENTER
METROPOLITAN DISTRICT (“CIC”) NOS. 13 & 14**

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228-1898
Tel: (303) 987-0835
Fax: (303) 987-2032

NOTICE OF A REGULAR MEETING AND AGENDA

<u>Board of Directors</u>	<u>Office</u>	<u>Term/Expires</u>
Andrew Klein	President	2023/May 2023
Otis Moore, III	Treasurer	2025/May 2025
Theodore Laudick	Assistant Secretary	2025/May 2025
Megan Waldschmidt	Assistant Secretary	2025/May 2023
Blake Amen	Assistant Secretary	2023/May 2023
Ann Finn	Secretary	

DATE: February 27, 2023

TIME: 1:00 p.m.

PLACE: VIA Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/84356862246?pwd=MjdWemR5bUU0QWpScFlvd25SUnltdz09>

Meeting ID: 843 5686 2246

Passcode: 018446

One tap mobile

+17193594580,,84356862246#,,,,*018446# US

+16699006833,,84356862246#,,,,*018446# US (San Jose)

I. ADMINISTRATIVE MATTERS

A. Present Disclosures of Potential Conflicts of Interest.

B. Approve Agenda; confirm location of meeting and posting of meeting notices.

II. CONSENT AGENDA – These items are considered to be routine and will be approved and/or ratified by one motion. There will be no separate discussion of these items unless a Board Member so requests, in which event, the item will be removed from the Consent Agenda and considered on the Regular Agenda.

- Review and approve Minutes of the January 23, 2023 Regular Meeting (**DHP, CIC No. 13 and CIC No. 14**) (enclosures).
-

III. PUBLIC COMMENTS

- A. Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes.
-

IV. FINANCIAL MATTERS

- A. Review and ratify approval of the payment of claims for the period beginning October 17, 2022 through February 21, 2023, in the amount of \$249,396.14 (**DHP**) (enclosure).
-
- B. Review and accept the Financial Statements dated _____, 2023 and Cash Position Schedule, dated _____, 2023, updated as of _____, 2023 (**DHP, CIC No. 13, CIC No. 14**) (N/A).
-

V. CAPITAL MATTERS

- A. _____
-

VI. OPERATIONS AND MAINTENANCE

- A. _____
-

VII. LEGAL MATTERS

- A. Review and consider approval of Termination of Facilities Acquisition Agreement by and between Colorado International Center Metropolitan District No. 14 and Bottling Group Exchange Co., LLC (**CIC No. 14**) (enclosure).
-
- B. Review and consider approval of Facilities Acquisition Agreement by and between Colorado International Center Metropolitan District No. 14 and Bottling Group, LLC (**CIC No. 14**) (enclosure).
-
- C. Discuss potential Cost Sharing Intergovernmental Agreement between Denver High Point at DIA Metropolitan District and Aurora High Point at DIA Metropolitan District (**DHP**).
-

VIII. OTHER BUSINESS

IX. ADJOURNMENT **THE NEXT REGULAR MEETING IS SCHEDULED FOR
MARCH 27, 2023.**

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 13 HELD JANUARY 23, 2023

A Regular Meeting of the Board of Directors (referred to hereafter as the "Board") of the Colorado International Center Metropolitan District No. 13 (referred to hereafter as the "District") was convened on Monday, the 23rd day of January, 2023, at 1:00 p.m., via Zoom. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Otis Moore, III
Megan Waldschmidt
Blake Amen

Following discussion, upon motion duly made by Director Moore seconded by Director Amen and, upon vote, unanimously carried, the absences of Directors Andrew Klein and Theodore Laudick were excused, and Director Moore was appointed as Acting President for the meeting.

Also In Attendance Were:

Ann E. Finn; Special District Management Services, Inc.

Jon Hoistad, Esq.; McGeady Becher P.C.

Zachary Leavitt; CliftonLarsonAllen LLP

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Disclosure of Potential Conflicts of Interest: The Board noted it was in receipt of disclosures of potential conflicts of interest statements for each of the Directors and that the statements had been filed with the Secretary of State at least seventy-two hours in advance of the meeting. Attorney Hoistad requested that the Directors review the agenda for the meeting and advise the Board of any new conflicts of interest which had not been previously disclosed. No further disclosures were made by Directors present at the meeting.

ADMINISTRATIVE MATTERS

Agenda: Ms. Finn distributed for the Board's review and approval a proposed agenda for the District's Regular Meeting.

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the agenda was approved, as presented.

Meeting Location / Posting of Meeting Notices: The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District’s Board meeting. The Board determined the meeting would be held by video/telephonic means. The Board further noted that notice of the time, date and location was duly posted and that no objections to the video/telephonic manner of the meeting, or any requests that the video/telephonic manner of the meeting be changed by taxpaying electors within the District boundaries, have been received.

Minutes: The Board reviewed the Minutes of the October 24, 2022 Regular Meeting.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the Minutes of the October 24, 2022 Regular Meeting.

**PUBLIC
COMMENTS**

There were no public comments.

**FINANCIAL
MATTERS**

Financial Statements and Cash Position Schedule: The Board deferred discussion at this time.

**CAPITAL
MATTERS**

Engineer’s Report and Verification of Costs Associated with Public Improvements Report prepared by Schedio Group LLC: The Board reviewed the Engineer’s Report and Verification of Costs Associated with Public Improvements Report No. 15, dated January 13, 2023, prepared by Schedio Group LLC, for the amount of \$1,074,876.63.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the Engineer’s Report and Verification of Costs Associated with Public Improvements Report No. 15, dated January 13, 2023, prepared by Schedio Group LLC, for the amount of \$1,074,876.63.

Acceptance of Verified public improvement costs and allocation of same among Denver High Point at DIA Metropolitan District, Colorado International Center Metropolitan District No. 13, and Colorado International Center Metropolitan District No. 14 (the “Districts”), pursuant to Report No. 15: The Board discussed the verified public improvement costs and allocation of same

RECORD OF PROCEEDINGS

among Denver High Point at DIA Metropolitan District, Colorado International Center Metropolitan District No. 13, and Colorado International Center Metropolitan District No. 14, pursuant to Report No. 15.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the verified public improvement costs and allocation of same among Denver High Point at DIA Metropolitan District, Colorado International Center Metropolitan District No. 13, and Colorado International Center Metropolitan District No. 14, pursuant to Report No. 15.

Reimbursement to ACM High Point VI LLC (“ACM”) under the Capital Funding and Reimbursement Agreement (Denver High Point – Westside) between Denver High Point at DIA Metropolitan District and ACM, pursuant to Report: The Board discussed the reimbursement to ACM High Point VI LLC (“ACM”) under the Capital Funding and Reimbursement Agreement (Denver High Point – Westside) between Denver High Point at DIA Metropolitan District and ACM, pursuant to Report No. 15.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the reimbursement to ACM High Point VI LLC (“ACM”) under the Capital Funding and Reimbursement Agreement (Denver High Point – Westside) between Denver High Point at DIA Metropolitan District and ACM, pursuant to Report No. 15.

Requisition(s) for Reimbursement of Verified Public Improvement Costs, and any and all Resolution(s) Relating to such Requisition(s), Pursuant to Report: The Board discussed requisition for reimbursement of verified public improvement costs, and any and all resolution relating to such requisition(s), pursuant to Report No. 15.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved requisition for reimbursement of verified public improvement costs, and any and all resolutions relating to such requisition(s), pursuant to Report No. 15.

Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds: The Board discussed Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds, in the total amount of \$1,074,876.63.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds, in the total amount of \$1,074,876.63.

RECORD OF PROCEEDINGS

OPERATIONS AND MAINTENANCE None.

LEGAL MATTERS None.

OTHER BUSINESS None.

ADJOURNMENT There being no further business to come before the Board at this time, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE DENVER HIGH POINT AT DIA METROPOLITAN DISTRICT HELD JANUARY 23, 2023

A Regular Meeting of the Board of Directors (referred to hereafter as the "Board") of the Denver High Point at DIA Metropolitan District (referred to hereafter as the "District") was convened on Monday, the 23rd day of January, 2023, at 1:00 p.m., via Zoom. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Otis Moore, III
Megan Waldschmidt
Blake Amen

Following discussion, upon motion duly made by Director Moore seconded by Director Amen and, upon vote, unanimously carried, the absences of Directors Andrew Klein and Theodore Laudick were excused, and Director Moore was appointed as Acting President for the meeting.

Also In Attendance Were:

Ann E. Finn; Special District Management Services, Inc.

Jon Hoistad, Esq.; McGeady Becher P.C.

Zachary Leavitt; CliftonLarsonAllen LLP

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

Disclosure of Potential Conflicts of Interest: The Board noted it was in receipt of disclosures of potential conflicts of interest statements for each of the Directors and that the statements had been filed with the Secretary of State at least seventy-two hours in advance of the meeting. Attorney Hoistad requested that the Directors review the agenda for the meeting and advise the Board of any new conflicts of interest which had not been previously disclosed. No further disclosures were made by Directors present at the meeting.

ADMINISTRATIVE MATTERS

Agenda: Ms. Finn distributed for the Board's review and approval a proposed agenda for the District's Regular Meeting.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the agenda was approved, as presented.

RECORD OF PROCEEDINGS

Meeting Location / Posting of Meeting Notices: The Board entered into a discussion regarding the requirements of Section 32-1-903(1), C.R.S., concerning the location of the District's Board meeting. The Board determined the meeting would be held by video/telephonic means. The Board further noted that notice of the time, date and location was duly posted and that no objections to the video/telephonic manner of the meeting, or any requests that the video/telephonic manner of the meeting be changed by taxpaying electors within the District boundaries, have been received.

Minutes: The Board reviewed the Minutes of the October 24, 2022 Regular Meeting.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the Minutes of the October 24, 2022 Regular Meeting.

PUBLIC COMMENTS

There were no public comments.

FINANCIAL MATTERS

Claims: The Board deferred discussion at this time.

Financial Statements and Cash Position Schedule: The Board deferred discussion at this time.

CAPITAL MATTERS

Engineer's Report and Verification of Costs Associated with Public Improvements Report prepared by Schedio Group LLC: The Board reviewed the Engineer's Report and Verification of Costs Associated with Public Improvements Report No. 15, dated January 13, 2023, prepared by Schedio Group LLC, for the amount of \$1,074,876.63.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the Engineer's Report and Verification of Costs Associated with Public Improvements Report No. 15, dated January 13, 2023, prepared by Schedio Group LLC, for the amount of \$1,074,876.63.

Acceptance of verified public improvement costs and allocation of same among Denver High Point at DIA Metropolitan District, Colorado International Center Metropolitan District No. 13, and Colorado International Center Metropolitan District No. 14 (the "Districts"), pursuant to Report No. 15: The Board discussed the verified public improvement costs and allocation of same

RECORD OF PROCEEDINGS

among the Districts, pursuant to Report No. 15.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the verified public improvement costs and allocation of same among the Districts, pursuant to Report No. 15.

Reimbursement to ACM High Point VI LLC (“ACM”) under the Capital Funding and Reimbursement Agreement (Denver High Point – Westside) between Denver High Point at DIA Metropolitan District and ACM, pursuant to Report: The Board discussed the reimbursement to ACM High Point VI LLC (“ACM”) under the Capital Funding and Reimbursement Agreement (Denver High Point – Westside) between Denver High Point at DIA Metropolitan District and ACM, pursuant to Report No. 15.

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Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds: The Board discussed Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds, in the total amount of \$1,074,876.63.

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds, in the total amount of \$1,074,876.63.

Service Agreement for Denver High Point at DIA Landscape Maintenance Services between Denver High Point at DIA Metropolitan District and All Phase Landscape Construction, Inc. (“Landscape Services Agreement”): The Board discussed the Landscape Services Agreement.

RECORD OF PROCEEDINGS

Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved the Landscape Services Agreement.

OPERATIONS AND MAINTENANCE

None.

LEGAL MATTERS

None.

OTHER BUSINESS

None.

ADJOURNMENT

There being no further business to come before the Board at this time, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

RECORD OF PROCEEDINGS

MINUTES OF A REGULAR MEETING OF THE BOARD OF DIRECTORS OF THE COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 14 HELD JANUARY 23, 2023

A Regular Meeting of the Board of Directors (referred to hereafter as the "Board") of the Colorado International Center Metropolitan District No. 14 (referred to hereafter as the "District") was convened on Monday, the 23rd day of January, 2023, at 1:00 p.m., via Zoom. The meeting was open to the public.

ATTENDANCE

Directors In Attendance Were:

Otis Moore, III
Megan Waldschmidt
Blake Amen

Following discussion, upon motion duly made by Director Moore seconded by Director Amen and, upon vote, unanimously carried, the absences of Directors Andrew Klein and Theodore Laudick were excused, and Director Moore was appointed as Acting President for the meeting.

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ADMINISTRATIVE MATTERS

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**PUBLIC
COMMENTS**

There were no public comments.

**FINANCIAL
MATTERS**

Financial Statements and Cash Position Schedule: The Board deferred discussion at this time.

**CAPITAL
MATTERS**

Engineer’s Report and Verification of Costs Associated with Public Improvements Report prepared by Schedio Group LLC: The Board reviewed the Engineer’s Report and Verification of Costs Associated with Public Improvements Report No. 15, dated January 13, 2023, prepared by Schedio Group LLC, for the amount of \$1,074,876.63.

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Following discussion, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the Board approved Requisition No. 60 under the CIC MD No. 14 Series 2018 Bonds, in the total amount of \$1,074,876.63.

RECORD OF PROCEEDINGS

OPERATIONS AND MAINTENANCE None.

LEGAL MATTERS None.

OTHER BUSINESS None.

ADJOURNMENT There being no further business to come before the Board at this time, upon motion duly made by Director Moore, seconded by Director Amen and, upon vote, unanimously carried, the meeting was adjourned.

Respectfully submitted,

By: _____
Secretary for the Meeting

Denver High Point at DIA Metro District
 Check List - 10/17/2022 - 2/21/2023

VENDOR	PAYMENT AMOUNT	PROCESS DATE	PAYMENT TYPE
All Phase Landscape	4,174.51	02/14/23	Check
Denver Water	176.78	02/14/23	Vendor Direct
Martin/Martin	32,750.00	02/14/23	ePayment
McGeady Becher, PC	1,381.50	02/14/23	Check
PCS Group Inc	2,470.00	02/14/23	Check
Special District Mgmt. Services, Inc	1,103.40	02/14/23	ePayment
Xcel Energy	68.23	02/14/23	Check
City and County of Denver	10,250.00	02/01/23	Check
City and County of Denver	50.00	02/01/23	Check
City and County of Denver	18,220.00	02/01/23	Check
CliftonLarsonAllen LLP	8,482.95	01/06/23	Check
Denver Water	155.12	01/06/23	Vendor Direct
Godden\Sudik Architects,Inc.	4,307.50	01/06/23	Check
Martin/Martin	8,155.00	01/06/23	ePayment
McGeady Becher, PC	1,686.50	01/06/23	Check
PCS Group Inc	7,147.50	01/06/23	Check
Schedio Group LLC	6,855.36	01/06/23	ePayment
Silverbluff Companies, Inc.	26,000.00	01/06/23	Check
Special District Mgmt. Services, Inc	1,886.60	01/06/23	ePayment
Xcel Energy	65.03	01/06/23	Check
All Phase Landscape	22,074.49	12/02/22	Check
CliftonLarsonAllen LLP	26,344.72	12/02/22	Check
Co Special Dist Prop & Liab Pool	4,685.00	12/02/22	Check
Denver Water	7,976.80	12/02/22	Check
Dodge Construction Network	120.36	12/02/22	Check
McGeady Becher, PC	28,219.50	12/02/22	Check
Schilling & Company Inc.	8,500.00	12/02/22	Check
Special District Mgmt. Services, Inc	7,642.00	12/02/22	ePayment
T Charles Wilson insurance	775.00	12/02/22	ePayment
TownCloud , Inc.	7,484.40	12/02/22	Check
Xcel Energy	187.89	12/02/22	Check
Total	\$ 249,396.14		

TERMINATION OF FACILITIES ACQUISITION AGREEMENT

This **TERMINATION OF FACILITIES ACQUISITION AGREEMENT** (this “**Termination Agreement**”) is made and entered into this ____ day of _____, 2023 with an effective date of _____, _____, by and between **COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 14**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”) and **BOTTLING GROUP EXCHANGE CO., LLC**, a Delaware limited liability company (the “**Developer**”) (District and Developer may individually be referred to herein as a “**Party**” and collectively as the “**Parties**”).

RECITALS

A. The District and the Developer are parties to that certain Facilities Acquisition Agreement, dated July 13, 2022 (the “**FAA**”).

B. As of the effective date no amounts remain due and owing to Developer from the District for advances made pursuant to the FAA.

C. Due to changes in ownership of property located within the District, a different entity will be involved in the development of the property within the District.

D. Simultaneous with the execution of this Termination Agreement, the District is entering into a separate funding agreement with Bottling Group, LLC (the “**New Developer**”), pursuant to which the New Developer is obligated to advance funds to the District for the construction and financing of Improvements.

E. The Parties desire to terminate the FAA.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants hereinafter set forth, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. Termination. The Parties agree that the FAA is terminated and is of no further force or effect, as of the effective date of this Termination Agreement.

2. Representations. Each Party represents that it has not transferred, assigned, or granted to any other party any rights or obligations under the FAA.

3. Release. The Parties hereby release each other from any and all liabilities, obligations, or duties that may have arisen or have been contemplated by the FAA. Each Party agrees not to make any claim against the other Party with respect to the FAA or the performance or non-performance of any covenant or condition contained within or contemplated by the FAA.

4. Binding Effect. This Termination Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which counterparts, taken together, shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Termination Agreement as of the date first set forth above.

**COLORADO INTERNATIONAL CENTER
METROPOLITAN DISTRICT NO. 14**, a quasi-
municipal corporation and political subdivision of
the State of Colorado

By: _____
President

Attest:

Secretary

BOTTLING GROUP EXCHANGE CO., LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

FACILITIES ACQUISITION AND REIMBURSEMENT AGREEMENT

This **FACILITIES ACQUISITION AND REIMBURSEMENT AGREEMENT** (“**Agreement**”) is made and entered into effective the ___ day of _____, 2023 (“**Effective Date**”), by and between **COLORADO INTERNATIONAL CENTER METROPOLITAN DISTRICT NO. 14**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), **ACM HIGH POINT VI LLC**, a Delaware limited liability company (“**Developer**” or “**ACM**”), and **BOTTLING GROUP, LLC**, a Delaware limited liability company (the “**BGLLC**”) (individually, each a “**Party**” and collectively, the “**Parties**”).

RECITALS

A. BGLLC is the owner of certain property located in the City and County of Denver, Colorado (the “**City**”) and within the boundaries and/or service area of the District, legally described on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”).

B. Pursuant to the authority granted to the District by its Service Plan, as approved by the City Council for the City on March 13, 2006, as it may be amended from time to time (the “**Service Plan**”), the District is authorized to construct, acquire and install certain public improvements, including water, sanitation (including storm drainage), street, safety protection, park and recreation, transportation, limited fire protection, and mosquito control and other facilities and services (“**Improvements**”), which benefit property within the District’s boundaries and/or service area.

C. The Improvements are necessary for the development of the Property.

D. The District does not currently have sufficient monies available to construct and/or acquire the Improvements.

E. The District has determined that, for reasons of economic efficiency and timeliness, it is in the best interests of the District for the Developer and/or BGLLC to construct or cause construction of certain of the Improvements.

F. The District is a party to that certain Facilities Funding, Construction and Operations Agreement dated June 28, 2007, as amended by that certain First Amendment to Facilities Funding, Construction and Operations Agreement dated October 29, 2009 (the “**Master IGA**”) whereby Denver High Point at DIA Metropolitan District (“**DHP**” and, with the District, the “**Districts**”) acts as the “**Managing District**” for the District and is responsible for coordinating the financing, construction and operation and maintenance of the Improvements for the District and certain other metropolitan districts within its service area.

G. The District, ACM, and DHP have entered into that certain Capital Funding and Reimbursement Agreement dated July 20, 2017 (as it has been and may be amended from time to time, the “**CFRA**”), pursuant to which DHP and ACM have agreed to provide for the construction or acquisition of certain Improvements including, but not limited to, the design, testing,

engineering, and construction of the Improvements, together with the related consultant and management fees associated with the construction of the Improvements (“**Construction Related Expenses**”), and to the extent ACM advances monies to DHP for such Construction Related Expenses or expends monies on Construction Related Expenses for Improvements to be acquired by DHP, the District, City or other local government entity, DHP agreed to reimburse ACM for such Construction Related Expenses, as provided therein.

H. Pursuant to a separate Agreement and Assignment Regarding Metropolitan District Payments, assigned to the BGLLC on _____, 2023, ACM and BGLLC have agreed that, to the extent BGLLC constructs any Improvements, BGLLC shall be entitled to a maximum reimbursement amount for Construction Related Expenses (defined herein) associated with such Improvements of Five Million Dollars (\$5,000,000) (“**BGLLC Maximum Reimbursement Amount**”) and that ACM shall retain any and all right in and to reimbursements from the District arising from the Construction Related Expenses incurred by BGLLC in excess of the BGLLC Reimbursement Amount.

I. The District, Developer and BGLLC desire to set forth their respective rights, obligations and procedures with respect to the District’s reimbursement of the Developer and BGLLC as provided herein.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. Construction of Improvements. BGLLC agrees to design, construct, and complete the Improvements in full conformance with the design standards and specifications as established and in use by the District, if applicable, and substantially in accordance with (and only to the extent set forth in) the City approved plans (the “**Plans**”). If the District so requests, BGLLC shall provide periodic reports on the status of completion and costs of the Improvements.

2. Transfer of Completed Improvements. Upon completion of Improvements by BGLLC or a third party, BGLLC shall, subject to the City’s rights to the Improvements, transfer the completed Improvements by special warranty bill of sale to the District, substantially in a form attached hereto as **Exhibit B** and incorporated herein by this reference (“**Bill of Sale**”).

3. Construction Warranty and Assignment; Limitation of BGLLC’s Liability.

(a) BGLLC shall require, in each construction contract for all or any portion of the Improvements, that the contractor under such construction contract provide a warranty for the period of time between initial acceptance and final acceptance of the Improvements by the appropriate accepting jurisdiction. Upon BGLLC’s substantial completion of any Improvements to be perpetually owned, operated and maintained by the District, if any, and after initial acceptance by the City, BGLLC shall give the acquiring District a non-exclusive assignment of all warranties from third-party contractors and subcontractors in connection with all Improvements caused to be constructed by BGLLC and eligible to be financed by the Districts pursuant to their respective service plans.

(b) Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that BGLLC's agreement to construct or cause the construction of the Improvements as set forth in this Agreement is done as an accommodation to the Districts and that, except as expressly set forth in this subsection 3(b), BGLLC shall have no responsibility, liability or obligation with respect to (and the District hereby covenants not to sue BGLLC for, and hereby releases BGLLC from, all liability and claims relating to or arising from) the design, engineering, construction or completion of the Improvements, any damage, loss or injury to the District or otherwise related to any action or inaction of BGLLC in connection with this Agreement, or any defect in the materials or workmanship pertaining to the Improvements, except for any "Covered Liability," as hereinafter defined. "**Covered Liability**" means the following matters for which BGLLC shall be liable to the District in connection with its performance under this Agreement: (i) any damage, loss or injury arising from the willful misconduct, bad faith, recklessness or illegal acts of the BGLLC in performing or failing to perform hereunder, or (ii) damage, loss or injury arising from the fraudulent conduct of BGLLC; provided, however, that any damages to which the District shall be entitled to recover for any Covered Liability shall be limited to out-of-pocket losses, costs, damages or expenses, and the District shall not be entitled to recover from BGLLC any punitive or consequential losses, costs, damages or expenses or lost profits as a result of, or in connection with, any Covered Liability. BGLLC makes no representation or warranty with respect to the Improvements, and shall have no liability for any defect in the materials or workmanship pertaining thereto. Upon initial acceptance of completion of any Improvements by the District or applicable "Governmental Authorities", BGLLC shall provide the District with non-exclusive assignments of warranty from all contractors that have completed the Improvements. Upon receipt of such assignments, the District hereby agrees to look solely to the contractors engaged to construct and complete the Improvements for any contractual violation, indemnity, warranty or guarantee relating to the Improvements. This Subsection 3(b) shall survive expiration or termination of this Agreement.

4. Deliverables. BGLLC shall deliver the following to District at the time of or prior to the transfer of Improvements to the City or District(s), and at such other times upon request of the District (collectively, the "**Deliverables**"):

- (a) As-built drawings for the Improvements to be transferred to the District;
- (b) Lien waivers from each contractor in a commercially reasonable form verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full except for any retainage that is held by BGLLC until final acceptance of the Improvements;
- (c) Copies of all contracts, pay requests, change orders, invoices, the final AIA payment form (or similar form), canceled checks, and any other reasonably requested documentation to verify the expenses incurred by BGLLC relative to the construction and installation of Improvements by BGLLC;
- (d) For any Improvements to be perpetually owned, operated and maintained by the District, an executed Bill of Sale conveying the Improvements to the District; and

(e) To the extent necessary, any licenses or easements held by BGLLC and related to the installation, operation or maintenance of the Improvements.

5. Verification of Costs. Upon BGLLC's completion of any Improvements, BGLLC shall cooperate with Developer and the District, at no out-of-pocket cost to BGLLC, to enable the District's engineer or other independent engineer licensed in the State of Colorado to prepare a cost verification of the Improvements so that expenses can be verified as qualified Construction Related Expenses that may be eligible for reimbursement to BGLLC subject to the BGLLC Maximum Reimbursement Amount and/ or Developer as District Reimbursement Rights. Such cost verification (the "**Verification of Costs**") shall include, but not necessarily be limited to, a certification by the engineer generally stating that: (i) the Improvement(s) are fit for the intended purpose; (ii) the Improvements (including individual components) were constructed in substantial accordance with their design; and (iii) the costs for the design, construction and completion of said Improvements are reasonable ("**Verified Construction Costs**").

6. Acquisition of and Reimbursement for Improvements.

(a) Acquisition. The District shall acquire any Improvements not being acquired by the City or other local government, upon the expiration of any applicable warranty period, upon receipt, review and approval by the District's accountant and engineer of the Deliverables set forth in Section 4, above, and the Verification of Costs, as set forth in Section 5, above.

(b) BGLLC Reimbursement. Subject to the receipt of funding as set forth in Section 7 below, the District agrees to reimburse the Developer for Verified Construction Costs up to a maximum amount of Five Million Dollars (\$5,000,000). The District agrees to reimburse any Verified Construction Costs in excess of Five Million Dollars (\$5,000,000) to ACM under the CFRA. Developer agrees to submit all Deliverables to the District within three (3) years of execution of this Agreement. In the event the District has not paid or reimbursed the Developer for Verified Construction Costs, whether invoiced or not invoiced by such date, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

(c) Developer Reimbursement. With acknowledgement of consideration previously and otherwise paid, BGLLC acknowledges and agrees that: (i) the construction and conveyance of Improvements resulting in Verified Construction Costs in excess of the BGLLC Maximum Reimbursement Amount shall be without compensation from the District to BGLLC; and; (ii) District Reimbursement Rights in excess of the BGLLC Maximum Reimbursement Amount shall remain the property of the Developer and shall not be conveyed to BGLLC.

7. Funding. The Parties agree that no payment shall be required of the District hereunder unless and until the District issues bonds in an amount sufficient to reimburse the BGLLC and/or the Developer. The District may, however, make payments from available funds after the payment of the District's annual debt service and operations and maintenance expenses. BGLLC agrees that, to the extent that any amounts are still owed under this Agreement after the District issues bonds, any obligation to pay such amounts is subordinate to such bonds. The District agrees to exercise reasonable efforts to issue bonds to reimburse amounts owed to the

BGLLC and/or the Developer under this Agreement. It is hereby agreed and acknowledged that this Agreement evidences an intent to reimburse the Developer and ACM hereunder, but that this Agreement shall not constitute a debt or indebtedness of the District within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation for the purposes of Article X, Section 20 of the Colorado Constitution, and the making of any reimbursement hereunder shall be at all times subject to annual appropriation by the District. By acceptance of this Agreement, Developer and BGLLC agree and consent to all of the limitations in respect of the payment of the principal and interest due hereunder and in the District's Service Plan.

8. Representations. BGLLC hereby represents and warrants to and for the benefit of the District as follows:

(a) BGLLC is a limited liability company is qualified to do business in the State of Colorado.

(b) BGLLC has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement nor the compliance by BGLLC with any of its terms, covenants or conditions is or shall become a default under any other agreement or contract to which BGLLC is a party or by which BGLLC is or may be bound. BGLLC has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

(c) BGLLC represents that it has sufficient available funds to fulfill its obligations under this Agreement.

The foregoing representations and warranties are made as of the date hereof and shall be deemed continually made by BGLLC to the District for the entire term of this Agreement.

9. Term; Repose. This Agreement shall become effective on the Effective Date and shall remain in effect until all applicable Improvements have been constructed by BGLLC, all documentation and information reasonably required for verification of Construction Related Expenses has been provided and an Improvements constructed by BGLLC have been conveyed to the City, District, or other governing local government entity.

10. Notices. All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To District: Colorado International Center Metropolitan District
No. 14
c/o Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228
Attention: Ann Finn
Phone: 303-987-0835
Email: afinn@sdmsi.com

With a copy to: McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

To BGLLC: Bottling Group, LLC
c/o PepsiCo Global Real Estate
700 Anderson Hill Road
Purchase, NY 10577
Attention: Martyn Wallace, Director of Real Estate
Phone: 914-767-6543
Email: martyn.wallace1@pepsico.com

With a copy to: Levine & Levine, PLLC
2 Jefferson Plaza, Suite 100
Poughkeepsie, NY 12601
Attention: Dale J. Lois, Esq.
Phone: 845-452-2350
Email: dale@levinelevinelaw.com

To Developer: ACM High Point VI LLC
4100 East Mississippi Avenue, Suite 500
Glendale, CO 80246
Attention: Andrew R. Klein
Phone: 303-984-9800
Email: aklein@westsideinv.com

With a copy to: Westside Property Investment Company, Inc.
4100 East Mississippi Avenue, Suite 500
Glendale, CO 80246
Attention: Michael J. Schroeder
Phone: 303-984-9800
Email: mschroeder@westsideinv.com

All notices, demands, requests or other communications shall be effective upon such personal delivery, one (1) business day after being deposited with FedEx or other nationally

recognized overnight air courier service, on the date of transmission if sent by electronically-confirmed email transmission, or three (3) business days after deposit in the United States mail. By giving the other Party hereto at least ten (10) days' written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address or contact information.

11. Assignment. BGLLC shall not assign any of its rights or delegate any of its duties hereunder to any person or entity. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

12. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District, the Developer and BGLLC any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District, the Developer and BGLLC shall be for the sole and exclusive benefit of the District, the Developer and BGLLC.

13. Default/Remedies. In the event of a breach or default of this Agreement by any Party, any non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

14. Governing Law and Jurisdiction. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for any legal action relating to this Agreement shall be exclusive to the State District Court in and for the County of Adams, Colorado.

15. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

16. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

17. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

19. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

20. Amendment. This Agreement may be amended from time to time by agreement between the Parties hereto; provided, however, that no amendment, modification, or alteration of

the terms or provisions hereof shall be binding upon the District or the Developer unless the same is in writing and duly executed by the Parties hereto.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE TO FACILITIES ACQUISITION AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

**COLORADO INTERNATIONAL CENTER
METROPOLITAN DISTRICT NO. 14**, a
quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
President

Attest:

Secretary

BOTTLING GROUP, LLC, a Delaware limited
liability company

By: _____

Name: _____

Title: _____

ACM HIGH POINT VI LLC, a Delaware
limited liability company

By: _____

Name: _____

Title: _____

**EXHIBIT A
PROPERTY**

EXHIBIT I

Improvements

Project Description

Estimated/Actual Cost