

**INGRESS AND EGRESS EASEMENT  
AND MAINTENANCE AGREEMENT**

This Ingress and Egress Easement and Maintenance Agreement (this "Agreement") is executed this \_\_\_ day of January 2021 by and between **BBP-740, LLC**, a Colorado limited liability company (hereinafter referred to as "Grantor" or "Owner"), whose address is: 7765 Electronic Drive, Colorado Springs, Colorado, 80922, and **CS DEVELOPMENT PARTNERS LLC**, a Virginia limited liability company (hereinafter referred to as "Grantee" or "Owner"), whose address is: 520 West 21<sup>st</sup> Street, G-2 #710, Norfolk, Virginia, 23517, its successors and/or assigns. Grantor and Grantee may be collectively referred to as the "Owners" or singularly as "Owner" for purposes of this Agreement.

WHEREAS, Grantor is the owner of certain real property located in El Paso County, Colorado more particularly described as follows:

**THE EAST HALF OF LOT 5 IN AKER'S ACRES SUBDIVISION NO. 1, EXCEPT THAT PORTION  
CONVEYED TO EL PASO COUNTY BY WARRANTY DEED RECORDED JUNE 02, 2010 UNDER  
RECEPTION NO. 210051876, COUNTY OF EL PASO, STATE OF COLORADO**

Commonly known as 7765 Electronic Drive, Colorado Springs, Colorado, and tax assessor's parcel number 5332002019 (hereafter the "Original Property"); and

WHEREAS, Grantee has or will be purchasing a portion of the Original Property from Grantor and Grantor will retain ownership of the unsold portion of the Original Property; and

WHEREAS, the Original Property has or will be replatted into Lot 1 and Lot 2, as more particularly depicted in **Exhibit A** attached hereto, and by this reference made a part hereof; and

WHEREAS, Lot 1 and Lot 2 may be collectively referred to as the "Properties", "Lots 1 and 2", or singularly as "Lot" for purposes of this Agreement; and

WHEREAS, the Owners desire to convey to the other Owner reciprocal road access easements in, to, through, over, and across an existing access road located on the Properties, as more particularly depicted in **Exhibit B** attached hereto, and by this reference made a part hereof, and under the terms, conditions and agreements specified herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, the sufficiency of which is hereby acknowledged, it is agreed as follows:

ARTICLE I  
**Creation and Use of Ingress  
and Egress Easement**

**1.1 Incorporation.** The Recitals set forth above are hereby incorporated herein as if fully set forth in this Article.

**1.2 Grant of Ingress and Egress Easement.** Each Owner does hereby sell, convey, grant, assign and transfer unto the other Owner, their agents, guests, invitees, and licensees, a non-exclusive easement for the perpetual right of ingress and egress in, to, through, over, under and across Lots 1 and 2 as depicted on **Exhibit A** and delineated on **Exhibit B** (the "Easement Area") for the purpose of

(i) vehicular and pedestrian ingress and egress and (ii) to construct, reconstruct, operate, use, maintain, repair, replace and/or remove certain water, sanitary sewer and storm sewer improvements, including lines and mains, manholes, conduits, ventilators, lampholes, cables, electrical facilities and apparatus, landscaping improvements, riprap, boulders, wingwalls, drop structures, channel improvements and related improvements and appurtenances thereto (collectively, "Improvements"), if applicable, subject and pursuant to the terms and conditions set forth herein

**1.3 Barriers or Impediments.** No Owner or subsequent owners of Lots 1 and 2 shall construct, erect or install any fences, barriers, impediments, gates or other Improvements (collectively, "Impediments") within the Easement Area which would impede the use of the Easement Area. Any original Owner to this Agreement or any subsequent Owner if there is no original Owner (or its successor in interest) to this Agreement that still owns Lot 1 or Lot 2 shall have the right to remove any Impediments from the Easement Area, and such Owner shall not have any liability to the other Owner for any damage caused to such Impediment or the Easement Area by said removal. If an Owner has caused or allowed an Impediment to be constructed, erected, installed or maintained in the Easement Area, such Owner shall bear the costs of the removal of such Impediment.

**1.4 Individual Entry ways.** Each Owner shall be responsible to design, construct or install Improvements and maintain its respective pedestrian and vehicular entryways from any public roads, streets, or rights-of-way to its Lot in, to, through, over and across the Easement Area.

**1.5 No Parking.** Parking of any vehicles on any roadway within the Easement Area at any time is prohibited, except for vehicles owned or under contract for governmental entities using said roadway for fire, police or other emergency access.

## ARTICLE II

### Maintenance and Repair

**2.1 Maintenance and Repair.** Each Owner agrees to maintain the Easement Area and to exercise all ordinary and reasonable care in its use of the Easement Area. The Owners agree to respectively pay fifty percent (50%) of any and all expenses incurred to maintain the Easement Area, and any Improvements located therein, in a good and useable condition, including removal of ice, snow, weeds, trash and debris to resurface and repair the asphalt, but specifically excluding: (a) costs to maintain the individual entry ways to the Easement Area as more particularly described in Paragraph 1.4 herein, which shall be the responsibility of each Owner upon which such entry way is located, and (b) any expenses incurred by an Owner to remove any Impediments to the Easement Area as more particularly described in Paragraph 1.3 herein. Any maintenance costs incurred by one Owner that are to be shared between the parties pursuant to this Section 2.1 shall be paid by the other Owner within 30 days of receipt of a written invoice from such Owner evidencing the total costs of the applicable maintenance.

In the event of an emergency, e.g., a break in a water or sewer line, each Owner shall be authorized to take such action as is necessary to remediate the emergency situation. In the event one Owner takes action to remediate an emergency situation, then the other Owner shall be liable to such Owner for one-half of the cost of remediation. It shall be presumed that any action taken by an Owner to remediate an emergency situation shall be a common obligation of the Owners unless it is established that such action was clearly taken in bad faith and not for the common good of the Owners. Notwithstanding the foregoing, if an Owner's use of the Easement Area, or any portion

thereof results in any damage or destruction to the Easement Area, or any portion thereof, the Owner causing such damage shall repair the damaged property to its original condition prior to such damage or destruction. All such repairs and replacements shall be made with materials at least of equal quality to that originally installed or used. The damaging Owner shall be solely liable for all costs and expenses incurred in repairing that portion of the Easement Area so damaged. If any damaging Owner fails to repair any such damage as provided in this Agreement, the other Owner shall have the right to repair the same after 30 days prior written notice to the damaging Owner, in which event all of the other Owner's costs and expenses associated with such repair and replacement shall be paid to it by the damaging Owner within 30 days after such Owner's receipt of the bill for such cost and expenses. Any Owner's failure to pay such cost shall entitle the other Owner to a lien upon the Lot of said defaulting Owner pursuant to Section 3.4 below.

**2.2 Indemnity.** Each Owner shall indemnify, defend and hold the other Owners harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the indemnifying Owner's breach of this Agreement.

**2.3 Mechanics' Liens.** Nothing contained herein shall authorize any Owner, or any person or entity acting through, with, or on behalf of such Owner, to subject the other Owner's Lot, or any portion thereof, to mechanics liens. If any such lien shall be filed against another Owner's Lot, the Owner causing such lien shall cause the lien to be discharged at its sole cost and expense. In the event that the enforcement of such lien is not discharged within twenty (20) days after receipt of written notice of the lien by the Owner charged with causing the lien, then the Owner whose property is subject to the lien, at its option, and at the reasonable cost and expense of the other Owner, may enter into, defend, prosecute or pursue any effort or action (whether or not litigation is involved) as reasonably necessary to defend its property from and against such lien.

### ARTICLE III

#### **Default: Right to Cure; Liens**

**3.1 Default: Right to Cure.** If any Owner defaults in the performance of any of its obligations under this Agreement, including but not limited to the obligation to maintain and repair the Easement Area as provided in Paragraph 2.1 above, any non-defaulting Owner shall have the right, but not the obligation, upon fifteen (15) days written notice, to cure such default for the account of, and at the expense of the defaulting Owner; provided, however, that in the event of emergency conditions constituting default, the non-defaulting Owner acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the non-defaulting Owner will take in order to cure the default, including but not limited to, entering upon the Lot of the defaulting Owner to cure such default.

**3.2 Legal and Equitable Relief.** Each Owner shall have the right to prosecute any proceedings at law or in equity against the other Owner, or any other person, violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, in order to prevent the violating or defaulting Owner, or any such person, from violating or attempting to violate, or defaulting upon the provisions of this Agreement and to recover damages for any such violation or default. The remedies available under this Paragraph shall include, by way of illustration but not

limitation, ex parte applications for temporary restraining order, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default.

**3.3 Costs of Cure.** All costs and expenses reasonably incurred by the non-defaulting Owner to cure a default of the defaulting Owner under this Agreement, together with interest thereon at the rate of 18% per annum and all costs and expenses of any proceedings at law or in equity, including reasonable attorney's fees awarded by order of the court, shall be assessed against and be immediately due and payable by the defaulting or violating Owner.

**3.4 Lien.** The obligations set forth in this Agreement shall be personal obligations of each Owner. In addition, if any Owner fails to pay any obligations required to be paid by such Owner pursuant to this Agreement, the other Owners shall have the right to file a lien against the Lot of such Owner for the amounts due and owing, together with the attorney's fees incurred by the other Owners. Costs and expenses accruing and/or assessed pursuant to this Agreement shall constitute a lien against the defaulting Owner's Lot. The lien shall attach and take effect upon recordation of a claim of lien in the office of the El Paso County Recorder by the Owner making the claim. The claim of lien shall include (i) the name of the lien claimant; (ii) a statement concerning the basis for the claim of lien and identifying the lien claimant; (iii) an identification of the owner of the parcel or interest therein against which the lien is claimed; (iv) a description of the parcel against which the lien is claimed; (v) a description of the work performed or action taken which has given rise to the claim of lien and a statement itemizing the amount thereof; and (vi) a statement that the lien is claimed pursuant to the provisions of this Agreement. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or mailing to the address given for the mailing of tax statements in the El Paso County Assessor's office for the parcel or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Colorado.

**3.5 Waiver and Remedies Cumulative.** No waiver by an Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provisions contained in this Agreement. All of the remedies permitted or available to the Owners under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

#### ARTICLE IV

#### **Miscellaneous**

**4.1 Amendment and Termination.** This Agreement is perpetual and may only be amended or terminated by recordation of a written instrument in the official real property records of El Paso County, Colorado, mutually agreed to and executed by all of the then current owners of Lots 1 and 2 as noted on **Exhibit A** herein.

**4.2 Default; Attorneys' Fees.** The failure of an Owner to this Agreement to comply with its responsibilities or obligations herein shall entitle the non-defaulting Owner to pursue any and all appropriate legal recourse, including the rights of injunction, damages, specific performance or any or all of the above. Should an Owner institute legal action or proceeding for the enforcement of any responsibilities or obligations herein, the prevailing Owner shall be entitled to recover its reasonable attorneys' fees and costs incurred in the preparation and prosecution of such action or proceeding.

**4.3 Governing Law; Venue.** The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue shall be in El Paso County, Colorado.

**4.4 No Joint Venture.** Nothing in this Agreement shall be deemed or construed to create the relationship of partnership, joint venture, principal and agent, or any other association between or among the Owners.

**4.5 No Third Party Beneficiaries.** Nothing in this Agreement shall be deemed to constitute a gift, grant or dedication of any portion of the Easement Area to the general public or for any public purpose. The provisions of this Agreement are for the exclusive benefit of the Owners hereto (and their successors and assigns) and shall not be deemed to have conferred any rights, express or implied, upon any third person.

**4.6 Run With the Land.** The access easement and maintenance agreement granted in this document shall run with the land, shall be appurtenant to the Lots 1 and 2, shall bind the Owners, and shall inure to the benefit of and be binding upon the Owners' heirs, personal representatives, successors and assigns.

**4.7 No Dedication for Public Use.** The Easement is created for the purposes set forth in this Agreement, and there shall be no express or implied dedication of the Easement for public purposes; except that there is hereby granted the right to use the Easement for fire, emergency and police access by the appropriate governmental entities.

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

**4.9 Exhibits.** Each of the exhibits referenced herein and attached hereto are made part of this Agreement as if fully set forth herein.

**4.10 Estoppel Certificates.** Each Owner shall, without charge, deliver to the other Owner within Thirty (30) days after written request therefore by the other Owner, a written instrument duly executed and acknowledged, certifying: (a) whether or not the Owner has observed and performed all of the terms and conditions required to be performed and observed under this Agreement and, if not, specifying the same; and (b) the amounts, if any, which the certifying Owner has expended pursuant to the terms of this Agreement, for which a claim for reimbursement will be made to such other Owner. If such estoppel certificate is not executed and returned to the requesting Owner by the Owner from whom the certificate is requested within Thirty (30) days, then it shall be conclusively

presumed that the Owner from whom the certificate was requested has no claims against the Owner requesting the certificate and any person may rely on such presumption for all purposes.

**4.11 No Merger of Estates.** There shall be no merger of any easements, rights, interests, or estates created by this Agreement by reason of the fact that more than one Lot may be owned or held directly or indirectly by or for the account of the same person or entity, and no such merger shall occur unless and until all persons and entities at the time having an interest in any Lot(s) (including, but not limited to, the holders of any encumbrance on, all or a any portion of any Lot(s)) shall join in a written instrument affecting such merger and shall duly record the same.

**4.12 Counterparts.** This Agreement may be signed in multiple counterparts each of which shall be deemed an original, but all of which shall, taken together, be but one and the same instrument. Delivery by facsimile, or e-mail of a PDF copy, of a counterpart of this Agreement executed by Grantor or Grantee shall constitute delivery by such party of such party's executed counterpart of this Agreement.

**4.13 Insurance.** Each Owner shall maintain liability insurance with a combined single limit of coverage in the minimum amount of \$1,000,000.00 to insure against any claims for injury to person or property related to the use of the Easement Area. Each Owner shall be responsible for requiring that any person or entity doing any work on the Easement Area by or at the request of such Owner has workers' compensation insurance for all persons performing any work on the Easement Area.

IN WITNESS WHEREOF, the Owners have executed this Agreement the day and year first above written.

**OWNERS:**

**BBP-740 LLC**

Elizabeth L Carroll  
Elizabeth L Carroll, General Partner

2/4/2021  
Date

**CS Development Partners, LLC**

David J Stefano, Manager  
David Stefano, Manager

2/4/21  
Date

**EXHIBIT A**

**Final Plat Drawing (Replat)**



**EXHIBIT B**

**Easement Area**