

**FOURTH AMENDMENT  
TO MASTER LEASE AND DISPOSITION AGREEMENT**

**THIS FOURTH AMENDMENT TO MASTER LEASE AND DISPOSITION AGREEMENT** ("Fourth Amendment") is made and entered into as of the 31 day of December 2002, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of the Department of Aviation (the "City"), and **STAPLETON DEVELOPMENT CORPORATION**, a Colorado nonprofit corporation ("SDC").

**WITNESSETH:**

**WHEREAS**, the City and SDC entered into an agreement entitled Master Lease and Disposition Agreement, dated July 21, 1998, as amended by the First Amendment to the Master Lease and Disposition Agreement dated March 14, 2000, as amended by the Second Amendment to Master Lease and Disposition Agreement dated April 20, 2000, and as amended by the Third Amendment to Master Lease and Disposition Agreement dated July 23, 2001 (collectively the "Agreement"), concerning the disposition of the "Stapleton Site" as defined in the Agreement; and

**WHEREAS**, the City and SDC desire to further amend the Agreement as set forth herein;

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and SDC hereby agree as follows:

1. Defined Terms. Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Agreement.
2. Additional Defined Term. The following new defined term shall be added to the Agreement, as follows:

"Restated Stapleton Purchase Agreement" shall mean the Amended and Restated Stapleton Purchase Agreement between SDC and Forest City Enterprises, Inc. dated February 15, 2000, as the same may be amended from time to time.

3. Exhibit M. An additional Exhibit in the form attached to this Fourth Amendment as Exhibit A shall be added to the Agreement as Exhibit M.

4. Amending Certain Defined Terms.

(a) Section 2.13, entitled "CPI", shall be amended and restated as follows:

"CPI" shall mean, with respect to any Closing Date, the most recent semi-annual Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, Denver-Boulder-Greeley, CO, All Items and Major Groups Figures for Urban Wage Earners and Clerical Workers (1982-84=100).

(b) Section 2.14, entitled "CPI INCREASE", shall be amended and restated to read as follows:

"CPI Increase" shall equal a fraction, which shall never be less than one, which fraction is equal to the CPI on the Closing Date divided by the CPI for the second half of 1999.

5. Amendment of Section 5.03. Section 5.03 shall be deleted in its entirety.

6. Amendment of Section 12.01. Section 12.01 of the Agreement, entitled "TRANSFER OF OPEN SPACE", shall be amended as follows:

(a) Section 12.01 A. shall be amended and restated as follows:

A. 1. Conveyance.

As soon after the Commencement Date as is reasonably possible and in phases thereafter from time to time and, in each case, upon the satisfaction of conditions precedent set forth below, the City shall transfer those portions of the Open Space to be agreed to by the Manager and SDC. Such conveyance shall be by bargain and sale deed to SDC or other entity acceptable to SDC, in consideration of (i) the covenants of SDC under this Section 12, (ii) the enhanced value of the remainder of the Stapleton Site resulting from the conveyance of such Open Space and (iii) SDC's other covenants and agreements in this Agreement, including without limitation, SDC's obligations to maintain, manage and dispose of the Stapleton Site.

2. Covenants.

a. Such Open Space shall be used only for any of the following uses to the full extent permitted under the applicable zoning and the Stapleton Development Plan: (i) active recreation, including but not

limited to, golf courses; (ii) parks and trails; (iii) a greenway corridor to preserve such land for the indigenous flora and fauna thereon and restoration thereof; and (iv) an open space riparian corridor.

b. Notwithstanding the foregoing, the parties agree that certain conditions may occur that require the use of Open Space for other compatible uses. In such event, the parties agree to provide for such compatible uses, so long as (1) the proceeds to the Airport System under this Agreement are not diminished; (2) the amount of total Open Space of the Stapleton Parks and Recreation Master Plan is maintained; and (3) such proposed uses shall be designed to be compatible with adjacent park and open space facilities as defined by the City's Stapleton Parks and Recreation Master Plan. The following uses may be considered:

(i) Personal property owned by individuals to be designated by SDC may be located in the building located on Open Space parcel 7B, and a short-term lease may be granted to an existing tenant as a substitute location for such tenant's prior location in a building scheduled for demolition. Such use restrictions are intended to enhance the value of the remainder of the Stapleton Site.

(ii) Underground utilities and above and below ground storm drainage facilities contemplated in the Stapleton Infrastructure Final Master Plan Report dated June, 2000, as amended, and the Stapleton Outfall Master Plan shall be permitted in the Open Space, subject to the approval of the design and location of such infrastructure by the City and SDC. SDC's approval shall only be required for the facilities set forth above during the Term of this Agreement as it may be amended. For the purposes of this paragraph, all infrastructure within Open Space included in an Individual Facilities Development Agreement ("IFDA") executed by the City (whether such IFDA was executed before or after the date of this Fourth Amendment) shall be deemed to be approved by the City for the purposes of this paragraph.

(iii) Water facilities may be permitted as specifically set forth and in accordance with the provisions of the November 30, 1999, Water Agreement, as it may be amended, among Stapleton Development Corporation, the City and County of Denver acting by and through its Board of Water Commissioners, and the City.

(iv) "Park Roads" that have a primary purpose intended to provide access to and facilitate the use of the Open Space may be permitted upon approval by the City's Manager of Parks and Recreation. "Public Streets" that are 1) at grade and no reasonable park purpose can occur in conjunction therewith, and 2) intended to provide vehicular traffic across or through such Open Space may be permitted on the Open Space

upon approval by the Manager of Parks and Recreation so long as the location of the Public Street is consistent with the comprehensive planning of the Stapleton Parks and Recreation Master Plan. The parties agree that for the approximately 14.0 acres of Public Streets on Open Space currently planned as detailed on Exhibit M, entitled Proposed Open Space Crossings, SDC or its third party purchaser shall convey to the City the Option Property purchased by SDC located at the southeast corner of Smith Road and planned Yosemite Street, consisting of approximately 14.0 acres more or less, or such other approximately 14.0 acres of Option Property as may be agreed to among the City, SDC, and SDC's third party purchaser, prior to January 1, 2005. Any conveyance by the City, and in turn by SDC of the approximately 14.0 acres of Option Property located at Smith and Yosemite described herein shall be in accordance with all of the required terms and conditions for conveyances of the Option Property, including but not limited to Demolition Work and Environmental Remediation as set forth in Sections 11 and 13 hereof. The agreement to convey is not an exaction by the City and is being offered by SDC and on behalf of its successors and assigns, as consideration for the limited use of Open Space for streets serving the Stapleton Site. The parties agree that the Proposed Open Space Crossings are being detailed in this Agreement only for the purpose of establishing the approximate land acreage that will be used for the Proposed Open Space Crossings. The parties agree that the number of as well as the location and names of the Public Streets crossing Open Space may change so long as the Open Space acreage used for such Public Streets crossing Open Space is not materially increased over 14.0 acres. In the event that SDC or its third party purchaser proposes any Public Streets crossing Open Space, in addition to the number of Proposed Open Space Crossings listed in Exhibit M, and such additional Public Streets have a material impact on the Open Space uses or materially increase the Open Space acreage used for such Public Streets crossing Open Space above the 14.0 acres reflected in Exhibit M, then such Public Streets shall only be permitted upon agreement of the parties, including approval of the Manager of Parks and Recreation.

(v) A Colorado Department of Transportation (CDOT) facility to be located on a parcel not exceeding four (4) acres may be permitted upon the release of the Use Restrictions in accordance with Section 12.02 B, or upon release by the City of the Use Restrictions upon the conveyance to the City of land in equal or greater acreage for Open Space. Any land so conveyed to the City shall be contiguous to planned trunk Open Space as set forth in the Stapleton Parks and Recreation Master Plan; be in a physical condition and location acceptable to the City; and be free and clear of any liens or encumbrances, except those acceptable to the City. The parties recognize that replacement land conveyed to the City shall be considered in-kind consideration for the release of Use

Restrictions on land conveyed to CDOT and that lands used for the CDOT facility would otherwise have been used as Open Space.

(b) Section 12.01.B(i) shall be amended as follows:

The words "listing the City as an additional insured or" shall be deleted.

7. Amendment of Section 13.04. Section 13.04 of the Agreement, entitled "CONDITIONS PRECEDENT TO EXERCISE OF OPTION", shall be amended as follows:

Subsections (b) & (c) shall be deleted in their entirety.

8. Amendment of Section 13.05. Section 13.05, entitled "CITY'S APPROVAL OF NOTICE OF EXERCISE", shall be amended by adding the following language:

If the Manager waives the condition precedent set forth in Section 13.04(a), the Manager shall include the following sentence in the written waiver pertaining to SDC's notice of exercise of its option to purchase the referenced parcels: "The information applicable to such parcels does not indicate that any environmental remediation was required and, therefore, no Environmental Remediation was performed under the Master Lease and Disposition Agreement."

9. Amendment of Section 24. Section 24.A(a) of the Agreement, under "TERMINATION OF THE AGREEMENT", shall be amended and restated as follows:

(a) subject to extension as set forth below, not less than 200 Developable Acres on or before May 4, 2001 (the "First Measuring Date").

10. Full Force and Effect. Except as otherwise modified or amended herein, all terms and conditions of the Agreement shall remain in full force and effect as though set out in full herein.

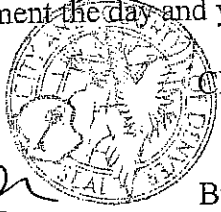
11. Final Approval. This Fourth Amendment shall not be effective or binding on the City until approved by the Denver City Council and fully executed by all signatories of the City and County of Denver.

12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to Master Lease and Disposition Agreement ~~the day~~ and year first above written.

ATTEST:

Sherry L. Jackson  
SHERRY L. JACKSON,  
Clerk and Recorder, Ex-Officio  
Clerk of the City and County of Denver



CITY AND COUNTY OF DENVER

By [Signature]  
Mayor

APPROVED AS TO FORM:

J. WALLACE WORTHAM, Jr., Attorney for  
the City and County of Denver

By [Signature]  
Assistant City Attorney

RECOMMENDED AND APPROVED:

By [Signature]  
Manager of Aviation

REGISTERED AND COUNTERSIGNED:

By [Signature] Deputy Auditor  
Auditor  
Contract Control No. CE 89010(4)

ATTEST:

\_\_\_\_\_  
Secretary

THE "CITY"

STAPLETON DEVELOPMENT  
CORPORATION

By [Signature]  
Title President

"SDC"

Exhibit A to the 4th Amendment to MLD

Exhibit M TO MLD  
Roads in Parks

3/14/02

<b>South of I-70</b>				
<u>Road Reference</u>	<u>Length</u>	<u>ROW Width</u>	<u>Acreage</u>	<u>Total Acreage</u>
35th Ave. (across Westerly Creek)	940	96	2.07	
MLK (across Westerly Creek)	780	160	2.87	
26th Ave. (across Westerly Creek)	730	60	1.01	
Beeler (across EW Linear Open Space)	260	60	0.36	
Yosemite (across EW Linear Open Space)	260	160	0.96	
23rd. Ave. (across EW Linear Open Space)	260	60	0.36	
Xanthia St. (across EW Linear Open Space)	260	60	<u>0.36</u>	
<b>Total south of I-70</b>			<b>7.97</b>	

<b>North of I-70</b>			
<u>Road Reference</u>	<u>Length</u>	<u>ROW Width</u>	<u>Acreage</u>
Un-named Rd. (north side of Section 10 open space)	700	60	0.964
56th Ave. (across N. Open Space)	1100	120	3.030
Yosemite (across EW Linear Open Space)	1100	96	2.424
47th. Ave. (across EW Linear Open Space)	800	70	1.286
Yosemite (across I-70 Linear Open Space)	100	160	<u>0.367</u>
<b>Total north of I-70</b>			<b>6.419</b>

14.39

Notes:

1. All dimensions assumed
2. Sand Creek Crossings @ Smith, Havana, Yosemite are not included
3. No areas were calculated for the open space that lies north of MLK and west of Westerly Creek
4. All roads bordering parks are assumed to be within right-of-way and are not counted in these calculations