

ABANDONMENT AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2025, by and between the City of Douglas, a municipal corporation (the “CITY”) and BW Gas & Convenience Real Estate, LLC (“Owner”), collectively referred to as the parties.

WHEREAS, by Ordinance No. _____ the CITY will vacate and abandon without compensation a portion of East 16th St. legally described on Exhibit “A” attached hereto (the “Abandoned Property”); and

WHEREAS, Owner’s parent company, BW Gas & Convenience Holdings, LLC, (“Parent”) is under contract to purchase the property ("Abutting Property") that abuts the Abandoned Property on both sides of the Abandoned Property;

WHEREAS, Owner will assume Parent’s rights to acquire the Abutting Property and upon closing, Owner will be the owner of the Abutting Property;

WHEREAS, pursuant to A.R.S. §28-7205, title to the Abandoned Property vests in the Owner subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues;

WHEREAS, pursuant to A.R.S. §28-7215(B), once the Abandoned Property is fully vacated and abandoned by the City, the Owner agrees to assume the cost of maintaining the Abandoned Property and assume all liability for the Abandoned Property to the extent arising or accruing after Owner obtains title to the Abandoned Property; and

WHEREAS, the parties enter into this Agreement to set forth their understandings and agreement in connection with the Abandoned Property.

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

1. Acknowledgment. The Owner hereby acknowledges that upon the vacation and abandonment of the Abandoned Property, it is taking title to the Abandoned Property subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues; provided, however, that City represents and warrants that there are no unrecorded liens or encumbrances and, to the City's actual knowledge, no hazardous conditions on the Abandoned Property created or imposed by the City. Notwithstanding anything in this Agreement to the contrary, all obligations of Owner under this Agreement are conditioned upon and commence only upon Owner’s receipt of recorded Ordinance No. __ vesting fee simple title to the Abandoned Property. City shall provide all reasonably necessary documentation and execute all instruments to effectuate transfer of fee simple title of the Abandoned Property to Owner.

2. Maintenance. Upon the vacation and abandonment and vesting of title of the Abandoned Property to Owner, Owner will assume and be responsible for the maintenance of the Abandoned Property at its sole cost and expense and the Owner agrees to maintain the Abandoned Property in good condition and repair, reasonable wear and tear excepted.

3. Use of Property; Re-Dedication or Penalty.

(a) The Owner hereby agrees that any future use of the Abandoned Property and the Abutting Property shall be in compliance with any and all applicable City or State laws, rules and regulations including, but not limited to, the City's Zoning Code and Subdivision Ordinance.

(b) Within eighteen (18) months after acquiring title to the Abandoned Property, the Owner shall have begun construction of a gas station and convenience store that is to be located on a portion of the Abandoned Property. The City Manager may extend this date by six (6) months for good cause as determined in the sole discretion of the City Manager. In the event Owner fails to begin construction of the gas station and convenience store within eighteen (18) months after the date of recordation of title pursuant to Ordinance No. ____, and provided City has not consented in writing to an extended time period, Owner may, at its sole option, either: (i) re-dedicate the Abandoned Property back to the City, and upon such dedication, the City will accept title to the Abandoned Property and assume and be responsible for the maintenance of the Abandoned Property at its sole cost and expense; or (ii) to pay a penalty in the amount of Ten Thousand Dollars (\$10,000.00) ("Penalty Payment"). If Owner selects option (i), then City shall accept title to the Abandoned Property and will otherwise cooperate with Owner with respect to the re-dedication of the Abandoned Property to City. If Owner selects option (ii), then within thirty (30) days after the Penalty Payment becomes due, Owner agrees to pay City the Penalty Payment by readily available funds, and in the event the Penalty Payment is not received by City within such thirty (30) day period, Owner consents to City filing a lien on the Abandoned Property in the amount of the Penalty Payment, plus the maximum interest provided by law.

4. Indemnification. Upon acquiring title to the Abandoned Property, the Owner will assume all liability for the Abandoned Property and, on behalf of itself and its successors and assigns, will indemnify, defend and hold harmless the City, its Council, Council Members, officials, officers, agents, attorneys, and successors, for, from and against any and all claims, demands, liabilities, losses, damages, liens, costs and expenses (including reasonable attorneys' fees and costs) which may be claimed or asserted against the City, its Council, Council Members, officials, officers, agents, attorneys, and successors to the extent arising out of the Owner's ownership of the Abandoned Property, except to the extent any such claim arises out of the City's gross negligence or willful conduct; provided, however, the Owner shall have no responsibility for environmental contamination or liabilities on the Abandoned Property arising prior to Owner acquiring title to the Abandoned Property and City shall bear the cost and responsibility for remediation and defense thereof, regardless of when discovered.

5. Assignment. Notwithstanding anything herein to the contrary, Owner shall have the right to assign this Agreement and/or transfer or sell Owner's interest in all or any part of the Abandoned Property and/or the Abutting Property to any third party. Any transferee or assignee shall assume, in writing, all obligations of Owner under this Agreement (whether arising before or

after such transfer), including development, maintenance, indemnification, and penalty obligations. Upon an assignment or sale by Owner and assumption of this Agreement by a transferee, the transferring Owner shall be released from future liability and obligations under this Agreement accruing after the date of transfer.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal and legal representatives, successors and assigns.

7. Venue and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Arizona, and the Cochise County Superior Court shall be the proper and exclusive venue for any litigation arising out of this Agreement.

8. Conflict of Interest. This Agreement is subject to the conflict of interest provisions set forth in A.R.S. Section 38-511.

9. Further Assurances. Each party shall execute and deliver such further instruments and take such further acts as may reasonably be required to effectuate the intent of this Agreement.

10. Attorney's Fees. In any litigation or dispute between the parties arising out of or relating to this Agreement, the prevailing party shall recover attorney's fees and costs.

11. Integration; Counterparts; Electronic Signatures. This Agreement constitutes the entire agreement of the parties, and may be executed in counterparts, including electronically.

{Signatures on following pages}

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

CITY OF DOUGLAS,
a municipal corporation

By: _____
Jose Girjalva, Mayor

Attest:

Approved as to form:

By: _____
Alma Andrade,
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

STATE OF ARIZONA)
) ss.
County of Cochise)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Jose Grijalva, the Mayor of THE CITY OF DOUGLAS, a municipal corporation of the State of Arizona, on behalf thereof.

Notary Public

My commission expires:

OWNER

BW GAS & CONVENIENCE REAL ESTATE, LLC,
a Delaware limited liability company

By: _____
Thomas Brown,
Senior Managing Director

STATE OF MASSACHUSETTS)
) ss.
County of Essex)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by Thomas Brown, Senior Managing Director of BW Gas & Convenience Real Estate, LLC, on behalf thereof.

Notary Public

My commission expires:

EXHIBIT A