



PRE-ANNEXATION AGREEMENT (AN-259-22)

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into as of the Effective Date, as defined below, by and between QuikTrip Corporation, an Oklahoma corporation ("Owner") and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado ("City").

WITNESSETH:

WHEREAS, the Owner is the owner of the property described in Exhibit "A," to this Agreement ("Property"), and has filed a petition to annex the Property into the City;

WHEREAS, the Owner desires, for the future development of the Property, that the City provide municipal services to the Property and that the Property be annexed to the City;

WHEREAS, the City desires that the Property be developed within the City's boundaries and that the City provide municipal services and receive revenues from development occurring on the Property;

WHEREAS, the Owner acknowledges that the need for conveyance and dedication of public rights-of-way and other land as contemplated in this Agreement are directly related to and generated by development intended to occur within the Property and that no taking or damage to the remainder of the Property thereby will occur requiring any compensation;

WHEREAS, the Owner acknowledges that the development of the Property may require the design and construction of, or contribution to the design and construction of certain public improvements, by the Owner related both in nature and extent to the impact of the development of the Property; and

WHEREAS, the Owner and the City are entering into this Agreement in furtherance of the annexation of the Property.

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:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

"Agreement" means this Agreement.

“Effective Date” means the effective date of action by the City Council approving the ordinance annexing the Property except as expressly specified in this Agreement.

“GID” means any General Improvement District organized within the boundaries of the City.

“Legal Challenge” means any legal proceeding or other action commenced by a third party that directly or indirectly challenges the approval of the annexation of the Property, the annexation zoning ordinance, this Agreement or any of the City’s ordinances, resolutions or other approvals approving any of the foregoing or the submission by any third party of a petition for a referendum seeking to reverse or nullify any of such ordinances.

“Property” means the real property described and depicted on Exhibit “A”.

“SACFPD” means South Adams County Fire Protection District.

“SACWSD” means South Adams County Water and Sanitation District.

ARTICLE 2. RIGHTS-OF-WAY, PUBLIC LAND CONVEYANCE AND PUBLIC IMPROVEMENTS

Conveyance of rights-of-way, easements and public land. At the request of the City, the Owner will convey from the Property at no cost to the City all rights-of-way, easements and public land reasonably required by the City, any GID, or any combination of those. All such conveyances shall be free and clear of liens and encumbrances, unless otherwise accepted by the City, and in such form as acceptable to the City. The City may require dedication of rights-of-way, easements and public land at any time construction thereof or thereon is deemed necessary in the public interest even if the Property is not being platted or developed at the time the City deems dedication of the rights-of-way, easements and/or public land is necessary.

Without limitation, the Owner specifically shall dedicate, upon request and for no compensation:

- All right of way needed for the construction and acceptance of the public improvements specifically identified in the paragraph below;
- An additional 10 feet of right-of-way adjacent to the property along 112th Avenue;
- An additional 1 foot of right-of-way adjacent to the property along Belle Creek Boulevard; and
- All right of way needed for Florence Street (75 feet, modified minor collector)/East 111th Avenue (54’, local residential) from 112th Avenue to Belle Creek Boulevard.
- Allocate sufficient area for a regional detention pond. The pond will be of sufficient attenuation and water quality capacity to serve the entirety of the proposed development associated with the approved plans. The improvements shall include the necessary volume, outfalls, rip rap, fore bays, trickle channel and flow control structures and storm piping
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Public improvements. The Owner shall be responsible for the design and construction of off-site and on-site public improvements for the development of the Property, including without limitation transportation, water, sanitary sewer, storm sewer, and drainage improvements. Additional transportation improvements, and the acquisition of real property, may be required of the Owner for the development of the Property, including without limitation, off-site transitions, turn lanes, raised landscape medians, traffic signals, pedestrian crossings and underpasses, intersection improvements, roadway connections, or any other improvements required by the City for development of the Property. If any of the improvements are constructed by the City, which improvements the Owner otherwise would have been responsible for in whole or in part, at any time including prior to the development of the Property, the Owner will reimburse the City for

the actual cost of the design and construction of such improvements brought to present day value at the time of payment (using the Construction Cost Index and never less than the actual cost of the design and construction); provided, however, the City shall give Owner at least thirty (30) days written notice before undertaking construction of any such improvements, but the failure to provide such notice shall not limit the Owner's obligation to reimburse the City. Such reimbursement shall be payable at the time of development of the Property, unless deferred by separate agreement, or within one (1) year of the City's demand for payment, whichever is earlier. The cost of designing and constructing all of the aforementioned public improvements shall be borne by the Owner, and the construction thereof shall be at the sole cost, risk and expense of the Owner. All such public improvements must be built or completed in accordance with the public way permit requirements, City of Commerce City Engineering Construction Standards and Specifications and such other adopted generally applicable standards, as applicable and as may be amended from time to time, as well as the Storm Drainage Criteria Manual pending as of the Effective Date, if not yet formally adopted.

Without limitation, the Owner specifically is obligated as follows:

- Within the East 112th Avenue right of way:
 - Design and construct the proposed roadway section to meet ½ the width of a multimodal arterial along the Property frontage. The improvements shall include the necessary auxiliary left and right turn lanes that are identified in the approved traffic study, curb, gutter, detached sidewalk and a tree lawn along the Property frontage.
 - Design and construct the full median, except in front of Florence Street inasmuch as to allow left turns from north and southbound Florence Street to East 112th Avenue, in East 112th Avenue in accordance with the City standard detail for a multimodal arterial.
- At the intersection of 112th Avenue and US 85:
 - Improvements to the intersection of East 112th Avenue with Highway 85 shall be modified to meet CDOT requirements (the "CDOT Improvements"). The CDOT Improvements include:
 - Design and construction of a westbound left turn lane (south onto US 85);
 - All costs associated with signal improvements for both the intersection of E 112th & US 85 and the railroad crossing at E 112th Ave & UPRR; and
 - Installation of curb and gutter and a median in 112th Avenue.
 - Increasing the storage length of the northbound left turn lane from an existing conditions requirement of 1,160 feet (935-foot turn lane plus 225-foot taper) to a 2040 required length of 1,210 feet (985-foot left turn lane plus 225-foot taper). The City is therefore requesting that the Owner contribute to increasing the northbound left turn lane 50 feet.
 - Increasing the length of the southbound acceleration lane from eastbound E 112th right turn onto US 85 from the existing 675 feet plus a 225-foot taper to the CDOT required 960 feet plus a 225-foot taper. This request is identified in the traffic report as an existing condition that does not meet CDOT requirements.
 - In lieu of actually constructing the CDOT Improvements, the Owner will provide 25% of the total cost of the CDOT Improvements to the City (the "CDOT CIL Payment"). The total costs for the CDOT Improvements is estimated to be \$1,387,314. Owner shall pay 25% of this amount, adjusted for inflation using the CDOT Construction Cost Index. The inflation adjustment shall only begin to accrue on any balance remaining after the first of the Phased Payments (as defined below) is made to the City and shall discontinue for each Phased Payment as said Phased Payment is made. The City shall provide Owner with a credit toward the Road Impact Fees in an amount up to the CDOT CIL Payment (the "Road Impact Fee Credit").
 - The CDOT CIL Fees may be paid in no more than three (3) separate phases (the "Phased Payments") and shall be paid as a condition of any replat of the tracts to lots.

- Additional details of the CDOT CIL Payment, the subsequent Road Impact Fee Credit, and the Phased Payments shall be provided in the Development Agreements associated with each final plat that will be processed within the Property.
- At the intersection of 112th Avenue and Florence Street;
 - Design and construct a traffic signal at the intersection of East 112th Avenue and Florence Street upon approval by the Colorado Department of Transportation (CDOT). In the event such traffic signal is not approved by CDOT, then Owner shall be responsible for design and construction of pedestrian crossing safety appurtenances which shall include construction of a 4 way stop condition that includes flashing red beacons on the east and west approaches to the intersection.
- Within the Florence Street right of way from East 112th Avenue to the south property line of the proposed Lot 1 development:
 - Design and construct the east one-half of Florence Street to meet a local commercial roadway section. The improvements shall include the necessary auxiliary left and right turn lanes that are identified in the approved traffic study, asphalt pavement, pavement markings, curb and gutter, storm sewer infrastructure, detached sidewalk and a tree lawn along the Property frontage.
 - Design and construct the west one-half of Florence Street to meet a local commercial roadway section. The improvements shall include asphalt pavement, pavement markings, curb and gutter, storm sewer infrastructure.
- Within the East 111th Avenue Right of Way from the southern property line of the proposed Lot 1 to Belle Creek Boulevard:
 - Design and construct the roadway section as depicted in the 54-FOOT Modified Minor Collector figure in the PUD zone document to meet the full width of a local roadway. The improvements shall include the necessary auxiliary left and right turn lanes that are identified in the approved traffic study, curb, gutter, detached sidewalk and a tree lawn along the Property frontage. Improvements shall include adding signage on westbound East 111th Avenue prohibiting trucks exceeding 8,000 pounds.
- Within the Belle Creek Boulevard Right of Way:
 - Construct the proposed roadway section to meet ½ the width of a minor collector roadway section along the Property frontage. The improvements shall include the necessary auxiliary left and right turn lanes that are identified in the approved traffic study, curb, gutter, detached sidewalk and a tree lawn along the Property frontage. Improvements shall include adding signage on southbound Belle Creek Boulevard prohibiting trucks exceeding 8,000 pounds.
- Design and construct the on-site, i.e. within the Property, storm water detention pond (“detention pond”) to serve the entirety of the proposed development. The detention pond shall include the necessary volume, outfalls, rip rap, fore bays, trickle channel and flow control structures and storm piping connecting to a City approved point of connection to the storm system installed with Belle Creek Filing 2.
- All road improvements shall include: pavement, curb, gutter, sidewalk, tree lawns, storm drainage and all related appurtenances, signage & striping, streetlights, traffic signals, a fire department approved turnaround and all other appurtenances necessary to be in full compliance with the CCRMC, LDC, and all applicable rules, regulations, and standards adopted by the City.

Maintenance of rights-of-way, easements and dedicated public land in accordance with City ordinances. For the period during which any such rights-of-way, easements and/or public land has been conveyed but has not been improved, the Owner will maintain any such unimproved rights-of-way, easements and/or public land pursuant to generally applicable maintenance requirements of the City. Notwithstanding the foregoing, the Owner shall maintain (in perpetuity) landscaping improvements along all principal and minor arterials and major and minor collector roadways.

ARTICLE 3. REIMBURSEMENT AGREEMENTS

To the extent public improvements (such as storm drainage facilities, street lighting or other public improvements) are oversized or extended onto adjacent property by the Owner for a benefit accruing to other parties, said improvements may be eligible for reimbursement. If said improvements qualify for reimbursement through the City, the Owner shall be required to enter into a Reimbursement Agreement with the City in accordance with the requirements of the City. In the case of water or sewer, eligibility for reimbursement, if any, must be coordinated and approved by SACWSD.

ARTICLE 4. DEVELOPMENT AGREEMENT

At the time the Property is developed, the Owner shall execute a development agreement with the City defining roadway construction, storm drainage facilities, landscaping requirements and any other dedicated public improvements. Those streets, storm drainage, landscaping, and other dedicated public improvements constructed by the Owner, by any district, or party under contract with the Owner, shall initially be accepted by the City upon completion of construction in accordance with City standards or other adopted standards (as well as the Storm Drainage Criteria Manual pending as of the Effective Date, if not yet formally adopted), or after correction pursuant to those standards of any defects in said streets, storm drainage, landscaping, or other public improvements, whichever date shall last occur. The Owner shall warrant construction of said streets, storm drainage, landscaping and other public improvements for one year after initial acceptance by the City at which time the City will commence maintenance of said streets, storm drainage, and other public improvements. The Owner shall maintain all landscaping improvements.

ARTICLE 5. STATUTORY DISTRICTS

Creation of Districts. Subject to the City's rights of review and approval or denial under the laws of the State of Colorado, the City shall approve the creation of one or more metropolitan district, authorized pursuant to Title 32 of the Colorado Revised Statutes as the same may be amended from time to time ("District"), as requested by the Owner for purpose of the acquisition, construction, installation, financing and/or maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. Such capital improvements and facilities may include all improvements permitted by said Title 32 including, but not limited to: water and sanitary sewer lines; storm drainage and detention improvements; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, street lights, safety protection improvements and other transportation facilities; and parks, trails and recreation facilities.

Any approval of such Districts, when required by the Owner, may include the following conditions, unless waived by the City:

- To the extent any such District designs, constructs, installs, or maintains improvements required to develop any part of the Property that is not included in the District, the District shall not bear the cost of, or shall enter into a reimbursement agreement with the benefited property owner including reasonable interest for the cost of, any part of such improvements that are not reasonably proportional to the benefit provided to property owners within the District and the owner of the Property that is not included in the District shall reimburse the District for the cost of such improvements benefiting it.

- No District shall levy, charge, or collect a sales or use tax.
- Districts shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.
- All improvements constructed by any District shall be designed, constructed, and warranted in accordance with the standards and specifications of the City and SACWSD.
- The City shall be the sole provider of municipal services to the Property, including police protection, street maintenance, zoning and code enforcement, and all other services as the City may customarily provide to the residents of the City; provided however, that the District may, at their option, provide supplemental street, median, landscape (including irrigation) and other facility maintenance services.
- The City shall not incur any expense in the formation or operation of the District or in the retirement of capital obligations related thereto.
- The Districts, when organized, shall not exceed the boundaries of the Property, nor have its powers altered in any way, without the prior approval of the City.

Maintenance Fee and Charges of District. Except as otherwise provided, nothing in this Agreement shall be construed to prohibit or preclude the Districts from establishing, fixing, levying, charging or collecting any rate, fee or charge, in addition to the rates, fees and charges to be collected by the City.

ARTICLE 6. IMPACT FEES AND OTHER CITY FEES

The Owner will pay City impact fees and other City fees adopted by the City and as may be amended from time to time, and uniformly charged for other property located in the general area for transportation, drainage, parks, trails and recreation facilities, water acquisition and other purposes authorized by law. All impact fees will be assessed in accordance with applicable law.

Road Impact Fee. The Owner will pay the City a road impact fee in the amount specified by City ordinance as applicable to the Property.

Drainage Impact Fee. The Owner will pay the City a drainage impact fee in the amount specified by City ordinance as applicable to the Property.

Parks, Trails and Recreation Facilities Impact Fee. The Owner will pay the City an impact fee for parks, trails and recreation facilities or dedicate land for parks, trail, and recreation facilities in the amount specified by City ordinance as applicable to the Property.

Water Impact Fee. The Owner will pay the City an impact fee for water in the amount specified by City ordinance as applicable to the Property.

School Capacity Fee. In accordance with the specifications of the School Capacity Fee, as established by School District 27J Capital Facilities Fee Foundation, the Owner will pay said fee for purposes of school capital construction. The Owner will execute a Participation Agreement providing for the payment of Capital Facility Fees. As said fees are adopted or amended by School District 27J Capital Facilities Fee Foundation or, as applicable, by the City of Commerce City, the Owner will pay the fee that is consistent with the adopted fee schedule.

Fees in Lieu of Land Dedication for Schools. In lieu of land dedication required by City ordinance for school purposes, the City may require the Owner to pay the fees in lieu of land dedication for schools according to the City's adopted schedule.

As fees in lieu of land dedication for schools are adopted or amended by the City, the Owner will pay the fee that is consistent with the adopted fee schedule.

Fire and Emergency Services Fee. The Owner will pay the impact fee for fire and emergency services in the amount specified by City ordinance as applicable to the Property.

Enforcement. The City may withhold any plat approval or withhold the issuance of any permits for grading, construction, or occupancy for failure to pay the fees as provided herein. All fees identified in this Agreement shall be subject to amendment by the City Council by ordinance and the City Council may create new fees of general application.

ARTICLE 7. CITY OBLIGATIONS

The City shall provide police and other municipal services to the Property to the same extent as those services are provided by the City elsewhere in the City, pursuant to the City's general and uniformly applied policies.

ARTICLE 8. WATER AND SEWER

Water and sewer services shall be provided by SACWSD and shall be agreed upon with SACWSD prior to development of the Property as a condition of development. The Owner must secure adequate water and sewer services and may be required to enter into a Water Resources Agreement with SACWSD to meet the contemplated requirements of the applicant's development prior to City approval of any development application. No development application shall receive approval from the City until such requirements have been met. Adequacy of water and sewer services shall be determined by the City and SACWSD. Future changes to the proposed development may require an amendment to the Water Resources Agreement in which event adequate water resources must be secured by the Owner prior to City approval of any permits for development. Water and sewer services must be obtained in accordance with the rules and regulations of SACWSD as the same exist at the time application is made to SACWSD for water and sewer services.

ARTICLE 9. URBAN GROWTH BOUNDARY

By allowing annexation of the Property, the City does not guarantee that the Property is located within the Urban Growth Boundary/Area, as defined by the Denver Regional Council of Governments, or other boundaries legislatively determined.

ARTICLE 10. FIRE PROTECTION

The Owner agrees to cooperate with the City and SACFPD to incorporate the Property into the service area of the SACFPD within one hundred and eighty days (180 days) of the Effective Date, unless the Property is included in the Greater Brighton Fire Protection District. If the Property is included in another fire district (other than the Greater Brighton Fire Protection District), the Owner shall also seek exclusion from such district.

ARTICLE 11. ZONING

Zoning of the Property shall be accomplished in accordance with the City's Codes, regulations, and standards and in accordance with Colorado Revised Statutes, as may be amended from time to time. The Property shall be subject to all applicable master plans adopted by the City at the time of subdivision or any future subdivision of the Property.

ARTICLE 12. GENERAL IMPROVEMENT DISTRICT

At the time of petition for annexation of the Property, if required by the City and if the Property is located within an applicable GID service area, the Owner must join the GID and pay the joinder fees associated with joining the GID.

ARTICLE 13. CONDITIONS PRECEDENT TO LEGAL EFFECTIVENESS OF ANNEXATION

The Parties acknowledge and agree that the legal effectiveness of the annexation of the Property pursuant to Section 113(2)(b) of the Annexation Act is subject to the terms of the Article 14. The City shall not file the ordinance annexing the Property or any maps with the Adams County Clerk & Recorder except in accordance with this Article 14. The Owner has the sole, exclusive and unilateral right to withdraw the annexation petition for the Property, and to exclude from the NIGID as provided in Article 12, by so notifying the Clerk of the City in writing at any point prior to the latest to occur of:

- the date of City Council action finally approving the ordinance annexing the Property;
- the date of City Council action finally approving the ordinance zoning the Property at the time of annexation; or
- the date of City Council action finally approving an ordinance ratifying this Agreement.

Upon satisfaction of all of the above, then the City Clerk may proceed with recordation of the annexation ordinance, in accordance with Section 113(2)(b) of the Annexation Act, the ordinance zoning the Property, and this Agreement. Notwithstanding the conditions subsequent, nothing herein shall be construed so as to delay, suspend or otherwise alter the mandatory statutory periods for any Legal Challenge. Further, it is expressly understood that this Agreement shall not expire or terminate during the pendency of any Legal Challenge and unless earlier terminated or modified by a written amendment signed by all parties hereto.

Further, the City and Owner shall cooperate to cure the legal defect and to pursue annexation and/or zoning of the Property or portion thereof in a manner that most fully implements the intent and purpose of this Agreement.

ARTICLE 14. MISCELLANEOUS

Recordation; Covenants. This Agreement shall be recorded with the Clerk and Recorder of Adams County. The provisions of this Agreement shall constitute covenants and servitudes which shall touch, attach to and run with the land comprising the Property. Except as provided in the paragraph entitled “No Third-Party Beneficiary” and as specifically provided in the paragraph entitled “Assignment,” this Agreement, including any burdens and benefits, shall be binding upon and shall inure to the benefit of the Property, the successors in interest, assigns and the legal representatives of the parties.

Assignment. The Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located upon or within the Property. The Owner reserves the right to assign to any District, upon the acceptance by the District all or any part or its obligations and rights under this Agreement with respect to the funding, construction, maintenance, reimbursement and/or offset of fees, to the extent assignable, and other matters related to the infrastructure required to support development of the Property in accordance with the terms and conditions of this Agreement and applicable law, as approved by the City. Any obligations to dedicate real property or to pay any fees shall not be assignable unless the District is the owner of such property and able to dedicate such property and make any payments in accordance with this Agreement. In such event, the District(s) will provide facilities and services that the City and/or Owner might otherwise have to provide. Accordingly, references to “Owner” in the context of public infrastructure improvement obligations addressed in this Agreement shall be construed to mean by reference the District(s) to the extent such entities subsequently assume the obligations of Owner pursuant to the terms of this Agreement. The Owner will remain jointly and severally liable with the District for the performance of the assigned obligations unless the City Manager releases the Owner from the performance of the assumed obligations in writing. Notwithstanding the foregoing, the duties and

obligations of the Owner under this Agreement may be assigned only to a person or entity that is financially responsible to perform such duties or obligations. The financial responsibility of such assignee shall be subject to the prior written approval of the City Manager or his or her designee, which approval shall not be unreasonably withheld, conditioned, or delayed.

Costs. The Owner will bear all costs necessary for the annexation, zoning, inclusion in any district, and any development approval in connection with the Property, including without limitation the annexation petition, legal descriptions, maps, publication, notice, presentations, and recordation. The City shall not, in any event, be liable to the Owner for any costs associated with the annexation or the failure of the annexation. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

No Reliance. The Owner acknowledges that the annexation and zoning of the Property are subject to the plenary legislative discretion of the City Council of the City of Commerce City and the rights of initiative and referendum reserved to its citizens. No assurances of annexation or zoning, or any development approval, incentive, or other condition, have been made to or relied upon by the Owner. If, in the exercise of its legislative discretion, and prior to the second reading of the annexation ordinance, the City fails to approve any proposed zoning, the sole and exclusive remedy of the Owner shall be the withdrawal of the annexation petition. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

Police Power. The Owner acknowledges that upon annexation the Property shall be subject to the same ordinances, rules, regulations, and policies as applicable to all other property presently situated within the boundaries of the City. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental, or police powers to promote and protect the health, safety, morals, or general welfare of the City or its residents. This Agreement shall not prohibit the enactment by the City of any fee, charter provision, ordinance, resolution, rule, or regulation which is of uniform and general application.

Incorporation. Exhibit A to this Agreement is attached and incorporated in this Agreement by reference.

Amendment of Agreement. This Agreement may be amended or terminated only by mutual consent in writing by the City and the Owner, its heirs, successors or assigns following the public notice and public hearing procedures required for the original approval and execution of this Agreement.

Remedies. In the event of a breach of default in performance of this Agreement, the parties shall have all remedies in law or in equity including specific performance. In no event shall the City be deemed to waive any rights existing or accruing to the City under the Colorado Governmental Immunity Act, nor shall the City be required to exercise its discretion to annex or zone the Property except as provided by law. In addition to any other remedies, the Owner acknowledges that the City may withhold or revoke any permits, approvals, or certificates for the Property or any structure or improvement within the Property as provided by law or in the event of a breach of this Agreement by the Owner.

Costs & Attorney's Fees. If the Owner breaches this Agreement, the Owner shall pay the City's reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement. In the event of a challenge as defined in Article 13 of this Agreement, the Owner shall pay its own and the City's reasonable costs and attorneys' fees incurred in defending the challenge.

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.

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.

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. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that the right of the Owner to receive, and the obligation of the City to pay, any credits or reimbursements hereunder shall accrue exclusively to the original parties to this Agreement, and shall not be assignable without the City's express written consent, and to any statutorily empowered districts created by the Owner pursuant to this Agreement, but to no others.

Jurisdiction and Venue. Jurisdiction and venue for any action to enforce or interpret the terms of this agreement shall be in the District Court of Adams County, Colorado.

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

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.

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

(Signatures contained on next page(s).)

PRE-ANNEXATION AGREEMENT

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

CITY OF COMMERCE CITY, COLORADO

By: _____
Roger Tinklenberg, City Manager

Date: _____

ATTEST:

Dylan A. Gibson, City Clerk

Approved as to form:

City Attorney

OWNER/QUIKTRIP CORPORATION:

Signature: _____

Printed Name: TROY C. DEVOS

Title: DIRECTOR OF REAL ESTATE

STATE OF Colorado)
COUNTY OF Adams) ss.

The foregoing instrument was acknowledged before me this 3rd day of June, 2022, by
Troy C. Devos

[Insert name of signer]
as Director of Real Estate, Quiktrip Corporation
[Insert title/authority of signer and name of Owner]

Witness my hand and official seal. Notary Public: Mike Talant

Address: 12000 N. Washington Thornton, CO. 80241
Street Number/Name City State Zip Code

(SEAL)

MICHAEL CLAY TALCOTT
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20214048604
MY COMMISSION EXPIRES DECEMBER 15, 2025

My Commission Expires: 12/15/2025