

## STORM WATER DRAINAGE EASEMENT

This Storm Water Drainage Easement ("Easement") is granted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the City of Commerce City, a home rule Colorado municipal corporation, with a principal place of business at 7887 E. 60th Avenue, Commerce City, CO 80022 ("Grantor" or "City"), to TTRG Commerce City CO, LLC, a Delaware limited liability company with a principal place of business at 901 Wabash Avenue, Suite 300, Terre Haute, IN 47807 ("Grantee"), and referred to collectively as Parties. The Commerce City Northern Infrastructure General Improvement District ("NIGID") consents to this Easement as set forth below.

The Parties hereto, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the adequacy of which is acknowledged by the Parties, the following agreements and understandings are made:

**1. GRANT.** Grantor does hereby grant, sell and convey to Grantee, its agents, successors, and assigns, an easement for the nonexclusive right to the property described in Exhibit A ("Easement Property") strictly and exclusively for the installation and operation of drainage facilities ("Facilities") as described in Exhibit B ("Description of Facilities") and for the limited purpose of conveying storm water from the real property known as Lot 2 in Second Creek Village in Commerce City, Colorado ("Grantee's Property"), to Second Creek, subject to the conditions and limitations set forth herein.

**2. CONSIDERATION.** Grantee shall convey to Grantor, within thirty (30) days of the date this Easement is executed, Five Hundred and Thirty-Six Dollars and Seventy-Nine Cents (\$536.79).

**3. RESERVATION OF USE AND OCCUPANCY.** Grantor retains the right to undisturbed use and occupancy of the Easement property insofar as such use and occupancy is consistent with and does not impair the Grantee's use of the Easement. The Grantor reserves the right to grant additional easements within the Easement Property, subject to the rights granted to Grantee hereunder. Notwithstanding any the foregoing, the Grantor may temporarily restrict Grantee's access to the Easement Property for reasonable periods of time, to perform maintenance or construction activities within the Easement Property; provided that storm water from Grantee's Property may continue to drain to the Easement Property.

**4. EASEMENT SUBJECT TO EXISTING EASEMENT; CONSENT.** The NIGID consents to the granting of this Easement and the installation and operation of the Facilities subject to the following conditions, which are expressly made part of this agreement:

a. Grantee acknowledges and agrees that a portion of the Easement Property includes property subject to an existing permanent easement in favor of the NIGID granted by that certain Grant of Easement and Agreement ("Existing Easement") dated December 20, 1999 and recorded with reception number C0625558, Book 5991, Page 0290-0295 on December 23, 1999 in Adams County, Colorado. The Existing Easement is intended to be assigned, in whole or in part, to the South Adams County Water and Sanitation District.

b. Grantee acknowledges and agrees: (1) that the NIGID's consent is required for granting of this Easement and the installation and operation of the Facilities; (2) that this Easement and Grantee's rights under this Easement are subservient to the Existing Easement; and (3) that neither this Easement nor Grantee's use of this Easement will impair the Existing Easement or the use of the Existing Easement by the NIGID or its successors or assigns.

c. With respect to the Facilities to be installed in the property subject to the Existing Easement, Grantee shall obtain consent from the NIGID prior to the installation and before changing in any way the grade or ground level within the Existing Easement property by more than one (1) foot. The Facilities shall not impair the right of subjacent and lateral support for the full and complete use of the

Existing Easement by the NIGID and SACWSD. Grantee shall take no action which would impair the earth cover over, or the lateral or subjacent support for, any line or related facilities within the Existing Easement property; provided, however, that upon obtaining the specific written permission of the NIGID and SACWSD, the earth cover over any pipeline or lines may be modified; except that permission normally will not be granted for modification involving cover of less than four and one half (4.5) feet, nor greater than ten (10) feet measured vertically from the top of any lines or facilities of the NIGID. If any of the Facilities need to be modified or removed for the full enjoyment or use of the Existing Easement, including the installation, repair or replacement of any existing or future lines or facilities in the Existing Easement, Grantee shall bear the cost of removal and replacement of the Facilities to accommodate that work.

d. The NIGID and its successors and assigns shall be express third party beneficiaries of this Easement and entitled to any remedy available at law or equity to enforce its rights under the Existing Easement or this Easement.

**5. MAINTENANCE.** Grantee shall maintain the Facilities. Grantee shall seek and receive written consent from the Grantor's City Engineer, which shall not be unreasonably withheld, prior to accessing the Easement Property for the purpose of conducting repair and replacement activities relating to the Facilities. Nothing in this Easement shall require the Grantor to construct, install, operate, maintain, repair, or replace any drainage facilities, storm water detention facilities, or water quality facilities. Notwithstanding the foregoing, the Grantor may: (1) in the event of an emergency, as determined by the Grantor in its sole discretion, clean, cure or correct any damage caused by the Grantee's failure to adequately maintain the Facilities located within the Easement Property, and the Grantee shall reimburse the Grantor for the reasonable cost of such actions within thirty (30) days after receipt of an invoice from the Grantor; and (2) directly or through Urban Drainage & Flood Control District perform maintenance or repair activities for the Facilities if the funding is made available for such activities and the City determines to conduct such activities, in which event, the Grantee shall only be responsible for costs in excess of the funding received for such activities.

**6. INTEGRITY OF EASEMENT PROPERTY.** Grantee shall not, intentionally or otherwise, cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous material, as defined below, to be dumped, spilled, released, permanently stored or deposited on, over, through, or beneath the Easement Property or any other lands owned by Grantor. The Grantee shall be responsible for and shall fully indemnify the Grantor for any corrective action (including risk assessment, active remediation, passive remediation, voluntary cleanup, investigation, and monitoring) of any environmental contamination resulting from the Grantee's use of the Easement, including the discharge of any hazardous material, including but not limited to any substances defined as or included in the definition of "hazardous substance," "hazardous material," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or a standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published or promulgated pursuant to said laws.

**7. RESPONSIBILITY FOR WORK.** Grantee shall pay or cause to be paid all costs for work done by or on behalf of the Grantee or any of its designees, contractors, or assigns occupying or doing work in the Easement Property. The Grantee shall keep the Easement Property free and clear of any mechanic's liens and other liens on account of work done or performed on behalf of the Grantee.

**8. COMPLIANCE WITH LAWS.** Grantee shall comply with all applicable laws, ordinances and regulations, including without limitation all applicable regulatory, environmental and safety requirements, at Grantee's sole cost and expense. Nothing herein shall be interpreted to waive any requirements of the City,

including but not limited to any requirement to obtain permits, with regard to the Facilities or the Easement Property.

**9. PROTECTION OF EASEMENT PROPERTY AND INSURANCE.** Grantee shall cause all contractors and subcontractors performing work on or about the Easement Property to take all necessary safety measures with respect to the construction and maintenance activities. Before commencing any work in the Easement Property, the Grantee will secure and maintain general liability insurance sufficient to cover any liability for its actions on the Easement Property and its use of the Grantee and shall name the Grantor as an additional insured on any such insurance policies.

**10. LIABILITY AND INDEMNIFICATION.** Grantee shall be liable and responsible for any and all damages (except for ordinary wear and tear) to persons or property caused by or arising out of the actions, obligations or omissions of the Grantee or its employees, agents, representatives, contractors or other persons acting under the Grantee's direction or control in the exercise of Grantee's rights and obligations under this Easement (including the installation and use of the Facilities). The Grantee shall indemnify, hold harmless, and defend the Grantor, its elected and appointed officials and its employees, agents and representatives (the "Indemnified Parties"), from any and all liability, claims, demands, actions, liens, damages, fines, fees, penalties, losses, judgments, costs or expenses, including, but not limited to, actual and reasonable attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the use by Grantee of the Easement or the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of the Grantee, its employees, agents or representatives or other persons for whom the Grantee is responsible, acting in relation to the Easement, the Easement Property, and Facilities. The provisions set forth in this paragraph shall survive the termination of this Easement.

**11. WAIVER OF WARRANTIES AND REPRESENTATIONS.** Grantee acknowledges and agrees that this Easement is subject to all prior rights, rights-of way, easements, and other encumbrances affecting the Easement Property. The Grantor makes no warranty of title as to the Easement Property. **THE GRANTOR HAS NOT AND DOES NOT MAKE ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OR REPRESENTATIONS OR GIVE ANY INDEMNIFICATION OF ANY KIND TO THE GRANTEE CONCERNING THE EASEMENT PROPERTY, THE GRANTOR'S TITLE TO THE EASEMENT PROPERTY, EASEMENT PROPERTY'S CONDITION OR SUITABILITY, OR THE GRANTEE'S USE OF THE EASEMENT PROPERTY BEING IN COMPLIANCE WITH ANY LAW OR REGULATION.** The Grantee hereby waives, releases, and forever discharges the Grantor, its directors, officers, and employees, of and from any and all claims the Grantee may have with respect to the condition, physical characteristics or environmental condition of the Easement Property.

**12. EASEMENT TO RUN WITH LAND; RECORDATION.** This Easement shall run with the land and apply to all interests now owned or hereafter acquired to the above-described property. The Grantee shall record this Easement within ten (10) days of execution.

**13. TERMINATION.** The Easement shall terminate automatically upon (1) the abandonment of the Facilities, which shall occur as provided by law or at any time that the Grantee provides the Grantor with a written notice of abandonment; (2) the Grantee's failure to maintain the Facilities or to perform any obligation under this Easement and does not cure such defect or default within thirty (30) days of written notice by the Grantor, unless such defect or default cannot reasonably be cured within a 30-day period, in which case the Easement shall not terminate so long as Grantee is diligently pursuing a cure to such defect or default; (3) the Grantee ceases to use the Easement for the purposes granted for a continuous period of two (2) years; (4) the Easement is no longer necessary because the storm water from the Grantee's Property is otherwise diverted or stored; or (5) the Grantee allows storm water not originating on the Grantee's Property to be conveyed to the Facilities without the Grantor's express written permission. If the Easement terminates, the Grantee shall restore the Easement Property to a condition that is reasonably satisfactory to and approved by the Grantor and shall execute and deliver to the Grantor a written release of this Easement in a recordable form.

**14. NO WAIVER OF GOVERNMENTAL IMMUNITY.** No term or condition of this Easement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

**15. SEVERABILITY.** If a court of competent jurisdiction holds any provision of this Easement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Easement.

**16. NO WAIVER OF BREACH.** Neither the Grantor's nor the Grantee's failure to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the Grantor's or the Grantee's failure, in any one or more instances, to exercise any option, privilege, or right, shall in no way be construed to constitute a waiver, relinquishment, or release of such obligations, covenants, or agreements, nor forbearance by the Granter or the Grantee of any default under this Easement shall in any manner be construed as a waiver of such default.

**17. HEADINGS.** Paragraph headings used in this Easement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Easement.

CITY OF COMMERCE CITY

City Attorney

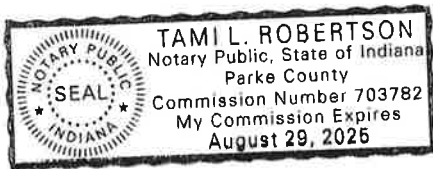
TTRG COMMERCE CITY CO, LLC

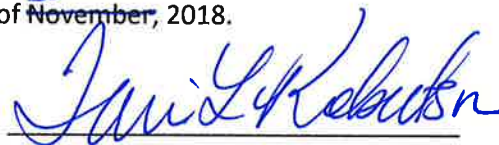
By:   
Paul M. Thrift, Manager

STATE OF INDIANA     )  
                                  )SS:  
COUNTY OF VIGO     )

Before me, a notary public personally appeared Paul M. Thrift, the Manager of TTRG Commerce City CO, LLC, a Delaware limited liability company, who acknowledged execution of the foregoing Storm Water Drainage Easement, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and seal this 7<sup>th</sup> December day of ~~November~~, 2018.



  
Notary Public

**Consent of Commerce City Northern Infrastructure General Improvement District**

The undersigned hereby consents to the Storm Water Drainage Easement from the City of Commerce City to TTRG Commerce City CO, LLC,.

**COMMERCE CITY NORTHERN INFRASTRUCTURE  
GENERAL IMPROVEMENT DISTRICT**

**Brian K. McBroom, Executive Director**

STATE OF COLORADO \_\_\_\_\_ )  
 )SS:  
COUNTY OF DENVER \_\_\_\_\_ )

Before me, a notary public personally appeared Brian K. McBroom, Executive Director of the Commerce City Northern Infrastructure General Improvement District, who acknowledged execution of the Consent of the foregoing Storm Water Drainage Easement.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

**, Notary Public**

**My Commission Expires:**

**County of Residence:**

## **EXHIBIT A LEGAL DESCRIPTION**

### **EASEMENT DESCRIPTION**

AN EASEMENT BEING A PORTION OF TRACT B, SECOND CREEK VILLAGE RECORDED AT RECEPTION NO. 2018000001835 OF THE ADAMS COUNTY CLERK AND RECORDER OFFICE AND SITUATED THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 2 SOUTH, RANGE 66 WEST OF THE 6<sup>TH</sup> P.M., CITY OF COMMERCE CITY, ADAMS COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS:** ALL BEARINGS ARE GRID BEARINGS OF THE COLORADO STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE, NORTH AMERICAN DATUM 1983. THE BEARING OF THE EAST RIGHT OF WAY LINE OF CHAMBERS ROAD MONUMENTED ON THE SOUTH SIDE WITH A NO. 5 REBAR AND 1 1/4" ALUMINUM CAP STAMPED "PLS 30099", AND ON THE NORTH SIDE WITH A NO. 5 REBAR WITH ORANGE PLASTIC CAP STAMPED "PLS 38069", IS N00°11'08"W.

**COMMENCING** AT THE SOUTHWEST CORNER OF SAID TRACT B, SECOND CREEK VILLAGE, THENCE, S00°11'08"E A DISTANCE OF 250.18 FEET; THENCE N89°48'52"E A DISTANCE OF 377.86 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT B AND BEING THE **POINT OF BEGINNING**.

THENCE N21°01'40"E, A DISTANCE OF 15.62 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 46°49'54", HAVING A RADIUS OF 87.50 FEET, AN ARC LENGTH OF 71.52 FEET, A CHORD WHICH BEARS N02°23'17"W A CHORD DISTANCE OF 69.55 FEET;

THENCE N25°48'14"W, A DISTANCE OF 384.02 FEET;

THENCE S73°58'49"E, A DISTANCE OF 33.55 FEET;

THENCE S25°48'14"E, A DISTANCE OF 361.65 FEET TO A POINT OF CURVATURE;

THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 46°49'54", HAVING A RADIUS OF 112.50 FEET, AN ARC LENGTH OF 91.95 FEET, A CHORD WHICH BEARS S02°23'17"E A CHORD DISTANCE OF 89.42 FEET;

THENCE S21°01'40"W, A DISTANCE OF 15.17 FEET TO A POINT OF NON TANGENT CURVE;

THENCE ALONG SAID NON-TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 02°57'10", HAVING A RADIUS OF 319.98 FEET, AN ARC LENGTH OF 16.49 FEET, A CHORD WHICH BEARS N69°17'19"W A CHORD DISTANCE OF 16.49 FEET TO A POINT OF REVERSE CURVE;

THENCE ALONG SAID REVERSE CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 01°45'33", HAVING A RADIUS OF 277.52 FEET, AN ARC LENGTH OF 8.52 FEET, A CHORD WHICH BEARS N71°24'16"W A CHORD DISTANCE OF 8.52 FEET TO THE **POINT OF BEGINNING**.

PARCEL CONTAINS 11,746 SQUARE FEET OR 0.270 ACRE, MORE OR LESS.

# EXHIBIT B

