

EASEMENT

THIS EASEMENT ("Easement") is granted this ____ day of _____, 2017 ("Effective Date"), by CITY OF COMMERCE CITY, a home rule municipality existing pursuant to the laws of the State of Colorado ("Grantor"), to JAY FOLEY PROPERTIES, LLC, a limited liability company ("Grantee"), for good and valuable consideration in the amount of \$10.00 and the covenants contained herein, the receipt of which is hereby acknowledged, as follows:

1. The Grantor grants to the Grantee, its agents, successors, and assigns, an easement for the nonexclusive and permanent rights to the property as described in Exhibit A ("Easement Property") strictly for the installation and use of drainage facilities (consist of those improvements described in Exhibit B ("Description of Facilities")) for the purpose of providing stormwater drainage of the real property located at 10381 & 10391 Havana St. ("Grantee's Property"). With the written permission of the Grantor's City Engineer, the Grantee may use the Easement Property for purposes of conducting temporary repair and replacement activities relating to the Facilities.

2. The Grantor retains the right to the 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 stormwater from Grantee's Property may continue to drain to the Easement Property.

3. The Grantee shall maintain all Facilities. Nothing in this easement shall require the Grantor to construct, install, operate, maintain, repair, or replace any drainage facilities or stormwater detention/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 cost of such actions within thirty (30) days after receipt of an invoice from the Grantor; or 2) directly or through Urban Drainage & Flood Control District, perform maintenance, repair, or maintenance 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.

4. The Grantee shall not 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, and shall fully indemnify the Indemnified Parties for, any corrective action (including risk assessment, active remediation, passive remediation, voluntary cleanup, investigation and/or 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 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 and/or promulgated pursuant to said laws.

5. The 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.

6. The 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.

7. The 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.

8. The 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 and hold harmless 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 within the Easement Property, and/or its employees, agents or representatives or other persons acting under Grantee's direction or control within the Easement Property. The provisions set forth in this paragraph shall survive the termination of this Easement.

9. The 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, THE 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.

10. 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.

11. The Easement shall terminate automatically upon 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, the Grantee fails 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, or the Grantee ceases to use the Easement for the purposes granted for a continuous period of two (2) years. If the Easement terminates, the Grantee shall restore the Easement Property to a condition that is 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.

12. 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.*

13. 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.

14. 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 Grantor or the Grantee of any default under this Easement shall in any manner be construed as a waiver of such default.

IN WITNESS WHEREOF, the undersigned has set his hands effective the day and year first above written.

CITY OF COMMERCE CITY

Sean Ford, Mayor

APPROVED AS TO FORM:

Robert D. Sheesley, City Attorney

ATTEST:

Laura J. Bauer, MMC, City Clerk

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Sean Ford, Mayor of the City of Commerce City.

Notary Public

My commission expires: _____

JAY FOLEY PROPERTIES, LLC

Title:_____

STATE OF _____)
) ss.
COUNTY OF ADAMS)

The above and foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, _____ of Jay Foley Properties, LLC.

Notary Public

My commission expires: _____