

## EASEMENT DEED AND AGREEMENT

This Easement Deed and Agreement ("Agreement") dated and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2017, is made by and between the City of Commerce City, whose address is 7887 East 60th Avenue, Commerce City, Colorado 80022 ("Grantor"), and South Adams County Fire Protection District, whose address is 6550 East 72nd Avenue, Commerce City, Colorado 80022 ("Grantee"). The Grantor and Grantee are referred to collectively as the "Parties" and individually as a "Party".

WHEREAS, Grantor owns the property situated in the City of Commerce City, County of Adams, State of Colorado, known as Lot 2 of the Prairie Gateway Subdivision Filing No. 1, Amendment No. 1 ("Grantor's Property");

WHEREAS, Grantee owns property adjacent to Grantor's Property that also is situated in the City of Commerce City, County of Adams, State of Colorado, known as Lot 1 of the Prairie Gateway Subdivision Filing No. 1, Amendment No. 1 ("Grantee's Property");

WHEREAS, pursuant to the Amended and Restated Purchase and Sale Agreement & Option to Repurchase between the Parties dated August 18, 2015, the Grantor agreed to grant the Grantee certain rights to use the existing parking lot adjacent to the Grantor's Civic Center through a perpetual easement to run with Grantor's Property; and

WHEREAS, Grantor wishes to grant to Grantee a parking easement for the benefit of Grantee's Property for use of approximately 30 unreserved parking spaces located on and burdening Grantor's Property for, in consideration of and on the terms described herein.

NOW, THEREFORE, in consideration of the Parties' grants, agreements and covenants set forth herein, the Parties make the following grants, agreements and covenants:

1. Grant. Subject to the terms and conditions set forth herein, Grantor hereby grants and conveys to Grantee as an appurtenance for the benefit of Grantee's Property an irrevocable, non-exclusive easement for use of up to 30 unassigned parking spaces within the existing parking facilities located on Grantor's Property, including all access rights necessary and attendant therewith ("Easement"). The Easement shall be a perpetual covenant running with the Grantee's Property and burdening the Grantor's Property, subject to the Option referenced in the General Warranty Deed dated October 1, 2015, recorded in the real property records of the Clerk and Recorder of Adams County, Colorado on October 1, 2015 at Reception No. 2015000082090.
2. Use. Grantee, and Grantee's successors and assigns, and any owners, managers, members, guests, invitees (business or social), licensees, employees, volunteers, agents, tenants and contractors of Grantee or Grantee's successors and assigns shall be permitted to use the Easement for parking in accordance with the terms of this Agreement and applicable law and regulations. Grantee, at its sole cost, shall be entitled to establish up to three (3) accessible parking spaces within the Easement, subject to the limitations of this Agreement.
3. Title. Grantee acknowledges and agrees that the Easement is subject to all prior rights, rights-of-way, easements, and other encumbrances affecting the Easement. Grantor has all requisite power and authority to execute, acknowledge and deliver this instrument and grant the

Easement hereunder, and that no third party consents or approvals are required for it to grant the Easement hereunder.

4. Reservation. Grantor retains the right to the undisturbed use and occupancy of Grantor's Property insofar as such use and occupancy is consistent with and does not unreasonably impair Grantee's use of the Easement. Grantor reserves the right to grant additional easements within Grantor's Property, subject to the rights granted to Grantee hereunder. Notwithstanding any of the foregoing, and upon reasonable notice to Grantee, Grantor may temporarily restrict use of the Easement for reasonable periods of time, to perform maintenance, snow management, special events, or construction activities or to permit other users to perform such activities within the Easement. Grantor reserves the right to establish rules and regulations for the operation and use of Grantor's Property, including all parking spaces.
5. Maintenance. Grantor shall maintain the Easement in the same manner and to the same standard of repair that it maintains all other unassigned parking spaces on Grantor's Property. Grantee shall be responsible for any damage to landscaping arising from Grantee's use of the Easement. Grantee shall pay Grantor the proportional costs Grantor incurs in maintaining the parking spaces on Grantor's Property, which proportional costs shall equal the percentage that 30 unrestricted parking spaces constitutes of the total parking spaces on Grantor's Property at the time such costs are incurred.
6. Non-Waiver. A Party'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 a Party'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, and no forbearance by a Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.
7. Governing Law. This Agreement concerns real property located in the State of Colorado and shall be interpreted and enforced according to the laws of the State of Colorado.
8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters covered hereby.
9. Binding Effect. The Easement and this Agreement are appurtenant to and for the benefit of Grantee's Property, burden the Grantor's Property, run with the land and shall be binding upon and inure to the benefit of the Parties and their successors and assigns.
10. Attorneys' Fees, Costs and Expenses. In any civil action or proceeding arising from or relating to this Agreement or the Easement, the prevailing Party shall be entitled to its reasonable attorneys' fees, costs and expenses, including the reasonable attorneys' fees, costs and expenses it incurs in collecting or executing upon any judgment, order or award.
11. Execution. This Agreement may be executed in multiple counterparts and by facsimile or electronic pdf, all of which shall constitute one binding instrument.
12. Recording. Grantee shall record this Agreement in the real property records of the Clerk and Recorder of Adams County, Colorado.

13. 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.*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**GRANTOR:**

CITY OF COMMERCE, CITY, COLORADO

\_\_\_\_\_  
Sean Ford, Mayor

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF ADAMS                    )

The foregoing Easement Deed and Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Sean Ford, the Mayor of the City of Commerce City, Colorado.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**GRANTEE:**

SOUTH ADAMS COUNTY FIRE  
PROTECTION DISTRICT, a political  
subdivision of the State of Colorado

\_\_\_\_\_  
Ken Koger, President of the Board

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF ADAMS                    )

The foregoing Easement Deed and Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Ken Koger, the President of the Board of Directors of the South Adams County Fire Protection District.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_