

WATER DRAINAGE EASEMENT

This 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"), and Big Black Dog, LLC a limited liability corporation, with a principal place of business at 25528 Genessee Trail Road, Golden Colorado, 80401 ("Grantee"), and referred to collectively as Parties.

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 grants 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 located at 15701 East 104th Avenue Commerce City, Colorado 80022 ("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, one hundred nineteen dollars and zero cents (\$119.00).

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. 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 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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, 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.

11. 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.

12. 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 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.

13. 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.*

14. 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.

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

16. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first hereinabove written.

CITY OF COMMERCE CITY

[GRANTEE]

Sean Ford, Mayor

Kevin Hoehner, Project Manager

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

City Attorney