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LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into effective this 14th day of Jan-
U.A.R.Y. uary, 2010, by and between City of Commerce City, a Colorado home rule municipality ("the
City"), and the Commerce City Historical Society.

WHEREAS, the Commerce City Historical Society (hereinafter, "Lessee") is a private, Nonprofit Corporation organized under the laws of the State of Colorado;

WHEREAS, Lessee desires to lease from the City a building on City-owned property located at 7450 Highway 2, Commerce City, Colorado (the "Premises");

WHEREAS, the City Council finds and determines that Lessee's use of the Premises to store items of historical significance will benefit the public and in particular the residents of the City of Commerce City, and as such, shall serve a public purpose in harmony with Sections 1 and 2 of Article XI of the Colorado Constitution; and

WHEREAS, the City Council finds that leasing the Premises to Lessee as herein provided is and will be in the best interests of the residents of the City of Commerce City.

NOW, THEREFORE, the City, for the consideration hereinafter set forth, DOES HEREBY LEASE THE PREMISES TO LESSEE, subject to the following terms and conditions:

1. **Premises.** The Premises shall consist solely of the building on the property located at 7450 Highway 2, Commerce City, Colorado. No rights to make use of other structures, improvements or grounds, other than for parking, are included in this Lease. Lessee hereby accepts the Premises as-is and acknowledges that the City makes no representations, warranties or guaranties as to its fitness for a particular purpose.
2. **Rent.** Lessee agrees to pay to the City the sum of Ten Dollars (\$10.00) upon execution of this Lease and upon each and every renewal hereof.
3. **Term of Lease – Initial and Renewal Terms.**
 - a) The Initial Term of this Lease shall be for twelve (12) months beginning on the date first written above and terminating precisely twelve (12) months from such date (the "Termination Date").
 - b) On the Termination Date, and on each Termination Date thereafter, this Lease shall automatically renew for a subsequent twelve-month term (a "Renewal Term") unless either party, not less than sixty (60) days prior to the Termination Date, notifies the other party, in writing, of non-renewal.
 - c) In no event shall the combined Initial and Renewal Terms exceed ten (10) years; provided, however, that this provision shall not be construed to prohibit the parties from entering into a new lease at any time.
4. **Use of Premises – Restrictions.**
 - a) Lessee acknowledges that the City maintains at the Premises a drop-off recycling center, a sign and grounds, and that the rights granted herein allow Lessee to make use of only the Premises and the parking area.

- b) The Premises shall be used by Lessee for storage and private office space only. Lessee shall not, at any time during any Term of this Lease, allow members of the general public to enter the Premises.
 - c) Exterior Restrooms.
 - 1. In the event Lessee desires to make the existing exterior restrooms available for use by its agents, representatives, volunteers, officers or directors, Lessee shall ensure that the restrooms are properly heated to protect water and sewer pipes from freezing.
 - 2. Existing exterior restrooms shall not be made available to either the general public or City staff.
5. **Care, Maintenance and Repair.**
- a) The City, at its sole cost, shall provide usual and customary care to the Premises including regular and general maintenance, but excluding custodial services.
 - b) Lessee shall be responsible, at its sole cost and expense, for any repairs or replacements that are occasioned or made necessary by reason of the use of the Premises by Lessee and its agents, representatives, volunteers, officers or directors.
6. **Lessor Access.** Lessee shall permit the City and the City's agents, representatives or employees to enter the Premises at all reasonable times and with reasonable notice for the purposes of:
- a) Inspecting the Premises to determine whether Lessee is in compliance with the terms of this Lease;
 - b) Performing other lawful acts as necessary to protect Lessor's interest in the Premises; or
 - c) Performing the City's duties under this Lease.
7. **Alterations.** No alterations to the Premises of any kind shall be made by Lessee without the express, written consent of the City.
8. **Utilities.** Lessee shall be responsible, at its sole cost and expense, for all utilities serving the Premises with the exception of water service, which the City shall provide at its sole cost.
- ~~9. **Hold Harmless.** Lessee shall hold harmless the City and its officers, agents and employees, from and against any liability, claim, action, cost, or demand, including reasonable costs and attorney fees, for injury, including death, to any person or damage to any property whatsoever and to whomever belonging (including Lessee and its agents, employees, servants, subcontractors or invitees) that arises out of or in connection with this Lease excluding only liability due to the negligence or willful misconduct of the City. This obligation shall continue beyond the term of this Lease as to any act or omission which occurred during or under this Lease.~~
10. **Insurance and Damage.** Lessee shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount not less than \$1,000,000.00 combined single limit for each occurrence. In the event damage not covered by Lessee's insurance occurs to the Premises as a result of Lessee's use or occupancy thereof, other than ordinary wear and tear, Lessee shall reimburse the City, or make arrangements agreeable to the City to reimburse the City, for

estimated expenses of repairing such damage, as determined by the City, within ten (10) days after written notice of the same is sent to Lessee.

11. **No Assignment; Subletting.** This Lease shall not be assignable by Lessee or by operation of law. Lessee shall not sublease any portion of the Premises. Any attempt to assign this Lease or sublease any portion of the Premises shall be null and void.
12. **No Waiver.** The waiver by the City of any breach of a term, provision or requirement of this Lease shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this Lease.
13. **Termination.** Either party may terminate this Lease by giving written notice of termination to the other party, specifying the effective date of termination, at least sixty (60) calendar days prior to the effective date of termination.
14. **Compliance with Applicable Law; City Rules and Regulations:**
 - a) Lessee shall comply with all applicable laws, statutes, ordinances and regulations of the City, the State and the Federal Government. Lessee shall not use the Premises or permit anything to be done in or about the Premises that conflicts in any way with any law, statute, ordinance or governmental rule or regulation now in force or that may hereafter be enacted or promulgated.
 - b) Any rules or regulations adopted by the City for the safety, care and cleanliness of the Premises and the preservation of good order on the Premises are expressly made a part of this Lease, and Lessee agrees to obey all such rules and regulations. With the exception of safety rules and regulations, Lessee shall be given thirty (30) days written notice prior to the City's adoption of any change to the rules and regulations governing the Premises.
15. **Severability.** The invalidity or illegality of any provision shall not affect the remainder of the Lease.
16. **Notice.** All notices shall be in writing. Notice is considered given either (a) when delivered in person to the recipient named as below, or (b) when deposited in the United States mail in a sealed envelope or container, postage prepaid, addressed by name and address to the party or person intended as follows:

If to the City:
Gerald M. Flannery, City Manager
7887 East 60th Avenue
Commerce City, CO 80022

If to Lessee:
JoAnn Stevens, Historical Society President
10671 Nucla Court
Commerce City, CO 80022

17. **Condition at Termination.** During the term of this Lease, Lessee shall at all times maintain the Premises in a good, clean and safe condition. Lessee shall leave the Premises in as good order and condition as said Premises were in at the beginning of the term of this Lease, ordinary wear and tear thereof and damage by the elements, fire, earthquake, flood, act of God or public calamity excepted.
18. **No Partnership or Agency.** Notwithstanding any language in this Lease or any representation or warranty to the contrary, neither the City nor Lessee shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the parties pursuant to this Lease shall be deemed actions as an independent contractor of the other.

19. **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Lease and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City and Lessee shall be deemed to be only an incidental beneficiary under this Lease

20. **Governmental Immunity.** No term or condition of this Agreement 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.*

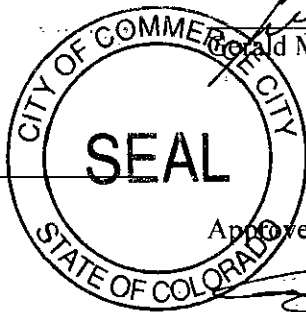
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

CITY OF COMMERCE CITY

[Handwritten Signature]
Gerald M. Flannery, City Manager

ATTEST:

[Handwritten Signature]
Laura J. Bauer, CMC, City Clerk



Approved as to form:

[Handwritten Signature]
Robert Gehler, City Attorney

COMMERCE CITY HISTORICAL SOCIETY

[Handwritten Signature]
Signature

Johanna M. Stevenson, pres.
Printed Name & Title

ATTEST:

[Handwritten Signature]
Secretary, Commerce City Historical Society