

## ANNEXATION AGREEMENT

### **ANNEXATION AGREEMENT**

**THIS ANNEXATION AGREEMENT** (“Agreement”) is made and entered into as of the Effective Date, as defined below, by and between Gilberto R. Carbajal Flores also known as Gilberto Rene Carbajal, a natural person (“Owner”), with a principal place of business at 8581 Rosemary Street, Commerce City, Colorado 80022. and the City of Commerce City, Colorado, a municipal corporation organized and existing under and by virtue of the laws of the state of Colorado (“City”), with a principal place of business at 7887 E. 60<sup>th</sup> Avenue, Commerce City, Co 80022.

#### **WITNESSETH:**

**WHEREAS**, except for public streets and highways the Owner is the owner of the property described in Exhibit A, to this Agreement (“Property”), and has filed a petition to annex the Property into the City;

**WHEREAS**, the Owner desires, for the future development of the Property, that the City provide municipal services to the Property and that the Property be annexed to the City;

**WHEREAS**, the City wishes to control its growth in a planned and orderly fashion, maintaining and improving its quality of life and its ability to provide and enhance environmental amenities, services, and local opportunity for its residents;

**WHEREAS**, the City desires that the Property be developed within the City’s boundaries and that the City provide municipal services and receive revenues from development occurring on the Property;

**WHEREAS**, the Owner acknowledges that the need for conveyance and dedication of public rights-of-way and other land as contemplated in this Agreement are directly related to and generated by development intended to occur within the Property and that no taking or damage to the remainder of the Property thereby will occur requiring any compensation;

**WHEREAS**, the Owner acknowledges that the development of the Property may require the design and construction of, or contribution to the design and construction of certain public improvements, by the Owner related both in nature and extent to the impact of the development of the Property;

**WHEREAS**, the Owner and the City are entering into this Agreement in furtherance of the annexation of the Property; and

**WHEREAS**, it is in the public interest for the parties to enter into a written agreement regarding the matters addressed in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **ARTICLE 1. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below.

“Agreement” means this Agreement.

“Effective Date” means the effective date of action by the City Council approving the ordinance annexing the Property except as expressly specified in this Agreement.

“GID” means any General Improvement District organized within the boundaries of the City.

“Property” means the real property described and depicted on Exhibit A.

“SACFPD” means South Adams County Fire Protection District.

“SACWSD” means South Adams County Water and Sanitation District.

## **ARTICLE 2. ANNEXATION**

2.1 Annexation of the Property shall be in accordance with the Colorado Municipal Annexation Act, C.R.S. § 31-12-101 *et seq.*, and all relevant provisions of the City Charter and the Commerce City Revised Municipal Code (the “Code”). The Owner agrees to cause a properly prepared and executed petition for annexation of the Property to be filed with the Clerk of the City and to initiate and, to the best of its ability, complete such annexation and cooperate in every way reasonably possible to facilitate the annexation of the Property by the City.

2.2 Owner agrees to not sign any other petition for annexation of the Property or any petition for annexation election relating to the Property, except upon request of the City.

## **ARTICLE 3. RIGHTS-OF-WAY, PUBLIC LAND CONVEYANCE AND PUBLIC IMPROVEMENTS**

3.1 *Conveyance of rights-of-way, easements and public land.* At the request of the City, the Owner will convey from the Property at no cost to the City all rights-of-way, easements and public land reasonably required by the City, any GID, or any combination of those. All such conveyances shall be free and clear of liens and encumbrances, unless otherwise accepted by the City, and in such form as acceptable to the City. The City may require dedication of rights-of-way, easements and public land at any time construction thereof or thereon is deemed necessary in the public interest even if the Property is not being platted or developed at the time the City deems dedication of the rights-of-way, easements or public land is necessary.

3.2 Without limitation, the Owner specifically shall dedicate, upon request or the first Final Plat, whichever is sooner, the following for right-of-way,

- *Ten-feet on East 86<sup>th</sup> Avenue and five-feet on Rosemary Street totaling 1,924 square feet (0.044 acres) of land for the use as public right-of-way more generally shown in Exhibit B.*

3.3 *Public improvements.* The Owner shall be responsible for the design and construction of off-site and on-site public improvements for the development of the Property, including without limitation transportation, water, sanitary sewer, storm sewer, and drainage improvements. Additional transportation improvements, and the acquisition of real property, may be required of the Owner for the development of the Property, including without limitation, off-site transitions, turn lanes, raised landscape medians, traffic signals, pedestrian crossings and underpasses, intersection improvements, roadway connections, or any other improvements required by the City for development of the Property. If any of the improvements are constructed by the City, which improvements the Owner otherwise would have been responsible for in whole or in part, at any time including prior to the development of the Property, the Owner will reimburse the City for the actual cost of the design and construction of such improvements brought to present day value at the time of payment (using the Construction Cost Index) and never less than the actual cost of the design and construction. Such reimbursement shall be payable at the time of development of the Property, unless deferred by separate agreement, or within one (1) year of the City’s demand for payment, whichever is earlier. The cost of designing and constructing all of the aforementioned public improvements shall be borne by the Owner, and the construction thereof shall be at the sole cost, risk and expense of the Owner. All such public improvements must be built or completed in accordance with the

public way permit requirements, City of Commerce City Engineering Construction Standards and Specifications and such other adopted standards, as applicable and as may be amended from time to time.

3.4 Without limitation, the Owner specifically is responsible for the following public improvements, which may be detailed in a development agreement or public improvement agreement required pursuant to Article 5 of this Agreement:

- Installation of curb, gutter, sidewalk, asphalt paving, striping, and detectable warning surface along East 86<sup>th</sup> Avenue and Rosemary Street.
- Installation of right-of-way landscaping along the west side of Rosemary Street from East 86th Avenue to the southern property line of the Property.
- Installation of right-of-way landscaping along the south side of East 86th Avenue from Rosemary Street to the western property line. Landscape improvements for the right-of-way ranging from Rosemary Street to the sidewalk connection to East 86th Avenue.

3.5 *Maintenance of rights-of-way, easements and dedicated public land in accordance with City ordinances.* For the period during which any such rights-of-way, easements or public land has been conveyed but has not been improved, the Owner will maintain any such unimproved rights-of-way, easements and public land pursuant to maintenance requirements of the City.

#### **ARTICLE 4. REIMBURSEMENT AGREEMENTS**

To the extent public improvements (such as storm drainage facilities, street lighting or other public improvements) are oversized or extended onto adjacent property by the Owner for a benefit accruing to other parties, said improvements may be eligible for reimbursement. If said improvements qualify for reimbursement through the City, the Owner shall be required to enter into a Reimbursement Agreement with the City in accordance with the requirements of the City. In the case of water or sewer, eligibility for reimbursement, if any, must be coordinated and approved by SACWSD.

#### **ARTICLE 5. PUBLIC IMPROVEMENT AGREEMENT OR DEVELOPMENT AGREEMENT**

At the time the Property is developed, the Owner shall execute a development agreement or public improvement agreement with the City defining roadway construction, storm drainage facilities, landscaping requirements and any other dedicated public improvements. Those streets, storm drainage, landscaping, and other dedicated public improvements constructed by the Owner, by any district, or party under contract with the Owner, shall be initially accepted by the City upon completion of construction in accordance with City standards or other adopted standards, or after correction pursuant to those standards of any defects in said streets, storm drainage, landscaping, or other public improvements, whichever date shall last occur. The Owner shall warrant construction of said streets, storm drainage, landscaping and other public improvements for two years after initial acceptance by the City at which time the City will commence maintenance of said streets, storm drainage, and other public improvements. The Owner shall maintain all landscaping improvements.

#### **ARTICLE 6. WAIVER OF VESTED RIGHTS**

By entering into this Agreement, the Owner of the Property does hereby agree to WAIVE, RELEASE, AND FOREVER DISCHARGE any and all pre-existing vested property rights on and in the Property, regardless of whether such vested property rights arise pursuant to a grant or approval from a governmental entity, by statute, or from common law. Any and all such vested property rights are extinguished upon the effective date of annexation of the Property. Any future claim to exercise a previously existing right or entitlement based thereon shall be void ab initio. Notwithstanding the foregoing, Owner is permitted to continue currently existing active land uses inconsistent with the initial zoning by the City and limited to their actual location on the Property at the time of annexation if certified as such by the Director of

Community Development prior to annexation. In such an event, those certified land uses will be considered prior legal but non-conforming uses.

## **ARTICLE 7. STATUTORY DISTRICTS**

7.1 *Creation of Districts.* Subject to any City moratorium on metropolitan districts and the City's rights of review and approval or denial under the laws of the State of Colorado, the City may approve, but shall not be required to approve, the creation of one or more districts including, but not limited to, special districts, general improvements districts, and metropolitan districts, authorized pursuant to Title 31 and Title 32 of the Colorado Revised Statutes ("C.R.S.") as the same may be amended from time to time ("District" or "Districts"), as requested by the Owner for purpose of the acquisition, construction, installation, financing, and maintenance of certain capital improvements and facilities, and for the provision of certain services which may be required to develop the Property. Such capital improvements and facilities may include all improvements permitted by said Titles 31 and 32 of the C.R.S. including, but not limited to: water and sanitary sewer lines; storm drainage and detention improvements; traffic and transportation facilities, including streets, bridges, roads, interchanges, signalization, street lights, safety protection improvements and other transportation facilities; and parks, trails and recreation facilities. Notwithstanding the foregoing, no District will be approved where ten percent or more of the property within the geographical boundaries of the District will be developed or is proposed to be developed for residential purposes. Any approval of compliant Districts may include the following conditions, unless waived by the City, which waiver shall not be unreasonably withheld.

7.2 No District created as a consequence of this Agreement shall levy, charge, or collect a sales or use tax.

7.3 Districts shall obtain all necessary permits and pay all prescribed fees associated with any and all improvements to be made.

7.4 All improvements constructed by any District shall be designed, constructed, and warranted in accordance with the standards and specifications of the City.

7.5 The City shall not incur any expense in the formation or operation of the District or in the retirement of capital obligations related thereto.

7.6 The Districts, when organized, shall not exceed the boundaries of the Property, nor have its powers altered in any way, without the prior approval of the City.

7.7 *Maintenance Fee and Charges of District.* Except as otherwise provided, nothing in this Agreement shall be construed to prohibit or preclude the Districts from establishing, fixing, levying, charging or collecting any rate, fee or charge, in addition to the rates, fees and charges to be collected by the City.

## **ARTICLE 8. MUNICIPAL SERVICES**

8.1 *General.* The City shall provide to the Property the usual and customary municipal services currently provided by the City within its municipal limits generally, in accordance with the ordinances and policies of the City. The Property shall be subject to all policies, ordinances, rules, regulations, platting restrictions and permitting procedures currently in effect or enacted in the future to allocate or regulate the use of the City's resources generally throughout the City.

8.2 *Electric, Natural Gas, Telephone, Cable TV and Other Utility Services.* The City does not provide electric, natural gas, telephone, or cable TV facilities or services. Such services are available within the City from private entities. The extension of such services to the Property is not the obligation or responsibility of the City.

8.3 *Transportation.* Once constructed and accepted, the City shall maintain duly dedicated and accepted public streets and roads within its municipal boundaries which serve the Property, both on and off-site, upon the same basis as

such services are provided to other property within the City.

**ARTICLE 9. IMPACT FEES AND OTHER CITY FEES**

9.1 In connection with the development of the Property, the Owner will pay City impact fees and other City fees adopted by the City, and as may be amended from time to time, and uniformly charged for other property located in the general area for transportation, drainage, parks, trails and recreation facilities, water acquisition, fire and emergency services, and other purposes authorized by law. All impact fees and other fees adopted by the City will be assessed in accordance with applicable law at the time that each becomes due. Nothing herein shall limit the authority to modify, amend, or add to the City's impact fees or other fees.

9.2 *Road Impact Fee.* The Owner will pay the City road impact fee in accordance with the requirements of the City, if the Property is located within the road impact fee area.

9.3 *Drainage Impact Fee.* The Owner will pay the City a drainage impact fee in the amount specified by City ordinance as applicable to the Property.

9.4 *Public Parks and Recreation Facilities Impact Fee.* The Owner will pay the City impact fee for parks, trails and recreation facilities or dedicate land for parks, trail, and recreation facilities in agreement with the City and in accordance with the requirements of the City.

9.5 *Water Impact Fee.* The Owner will pay the City impact fee for water in accordance with the requirements of the City.

9.6 *School Capacity Fee.* In accordance with the specifications of the School Capacity Fee, as established by School District 27J Capital Facilities Fee Foundation, the Owner will pay said fee for purposes of school capital construction. The Owner will execute a Participation Agreement providing for the payment of Capital Facility Fees. As said fees are adopted or amended by School District 27J Capital Facilities Fee Foundation or, as applicable, by the City of Commerce City, the Owner will pay the fee that is consistent with the adopted fee schedule.

9.7 *Fire and Emergency Services Impact Fee.* The Owner will pay the City impact fee in accordance with requirements of the City.

9.8 *Public Safety Impact Fee.* The Owner will pay the City impact fee for public safety in accordance with requirements of the City.

9.9 *General Government Facilities Impact Fee.* The Owner will pay the City impact fee for general governmental facilities in accordance with requirements of the City.

9.10 *Public Works Facilities Impact Fee.* The Owner will pay the City impact fee for public works facilities in accordance with requirements of the City.

9.11 *Fees in Lieu of Land Dedication for Schools.* In lieu of land dedication required by City ordinance for school purposes, the City may require the Owner to pay the fees in lieu of land dedication for schools according to the City's adopted schedule. As fees in lieu of land dedication for schools are adopted or amended by the City, the Owner will pay the fee that is consistent with the adopted fee schedule.

**ARTICLE 10. WATER AND SEWER**

10.1 Water and sewer services shall be provided by SACWSD and shall be agreed upon with SACWSD prior to development of the Property as a condition of development. The Owner must secure adequate water and sewer services

and may be required to enter into a Water Resources Agreement with SACWSD to meet the contemplated requirements of the applicant's development prior to City approval of any development application. No development application shall receive approval from the City until such requirements have been met. Adequacy of water and sewer services shall be determined by the City and SACWSD. Future changes to the proposed development may require an amendment to the Water Resources Agreement in which event adequate water resources must be secured by the Owner prior to City approval of any permits for development.

10.2 Water and sewer services must be obtained in accordance with the rules and regulations of SACWSD as the same exist at the time application is made to SACWSD for water and sewer services.

**ARTICLE 11. URBAN GROWTH BOUNDARY**

By allowing annexation of the Property, the City does not guarantee that the Property is located within the Urban Growth Boundary/Area, as defined by the Denver Regional Council of Governments, or other boundaries legislatively determined.

**ARTICLE 12. FIRE PROTECTION**

The Owner agrees to cooperate with the City and SACFPD to incorporate the Property into the service area of the SACFPD within one hundred eighty (180) days of the Effective Date. If the Property is included in another fire district (other than the Greater Brighton Fire Protection District), the Owner shall also seek exclusion from such district.

**ARTICLE 13. ZONING**

13.1 Zoning of the Property shall be accomplished in accordance with the City's Codes, regulations, and standards and in accordance with Colorado Revised Statutes, as may be amended from time to time. The Property shall be subject to all applicable master plans adopted by the City at the time of subdivision or any future subdivision of the Property. Where annexation is conditioned on zoning, any such condition shall apply only to initial zoning at the time of annexation. The City reserves the right to rezone the Property at a future date. The zoning and use of land within the Property remains subject to the police power and legislative authority of the City.

13.2 The Owner hereby requests "C-3 Regional Commercial District" zoning, in accordance with the site plan map attached hereto as **Exhibit A** and incorporated herein, and with the zoning categories contained in Section 21-4335 of the City's Land Development Code.

13.3 *Effect of Failure to Zone.* In the event that the City Council fails or refuses to enact an ordinance or ordinances zoning the Property as above described within eighty-nine (89) days of the second reading of the annexation ordinance, then the annexation ordinance shall become null, void, and of no effect, and the annexation map and plat of the Property shall not be filed for record with the Adams County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2).

13.4 *Challenge to Zoning Ordinance.* Should the ordinance(s) annexing and/or zoning the Property be challenged by citizen initiative, referendum, or otherwise, and should any such challenge result in the invalidity of the annexation or zoning ordinance(s) upon entry of a final order of court which is unappealable or which the parties have elected not to appeal, then, similarly, the annexation of the Property shall be null, void and of no effect, and the annexation map and plat shall not be filed with the Adams County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2) and if already filed, the City shall promptly act to disconnect the Property. In that circumstance, the parties agree that the procedure set forth in C.R.S. § 31-12-501, *et seq.*, shall apply, exclusive of any other disconnection procedure. In the event of invalidity of the annexation ordinance(s) pursuant to any of the conditions described in this Section, such invalidity shall not be deemed a breach of the Agreement by either party, and the parties shall be deemed released from further obligations hereunder, provided that Owner shall remain responsible for the cost of legal defense pursuant to Articles 17 and 18 hereof.

**ARTICLE 14. DEVELOPMENT**

14.1 *Application of City Requirements.* The Property shall be developed in general conformity with City's current Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements, including without limitation, those pertaining to zoning, subdivision, streets, storm drainage, utilities, landscaping, parks and open spaces, and flood control. The City may amend and apply to the Property the City's Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements from time to time as needed to address changing effects upon the City's infrastructure, administration and delivery of governmental services as a result of development occurring within the City so long as the same are generally applicable and uniformly applied or enforced to all similarly situated property within the City.

14.2 *Subdivision Required.* Any subdivision of the Property following annexation shall be in accordance with City subdivision and other applicable regulations in effect at the time application is made for subdivision approval. In addition to the improvements required by this Agreement, the specific Public Improvements required in connection with such development shall be determined during the subdivision process, in accordance with applicable regulations of the City.

14.3 *Annexation and Zoning Subject to Legislative Discretion.* The Owner acknowledges that the annexation and subsequent zoning of the Property are subject to the legislative discretion of the City Council. No assurances of annexation or zoning have been made or relied upon by the Owner. In the event that the City Council, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the City in accordance with state law, as may be appropriate.

**ARTICLE 15. GENERAL IMPROVEMENT DISTRICT**

At the time of petition for annexation of the Property, if required by the City and if the Property is located within an applicable GID service area, the Owner must join the GID and pay the joinder fees associated with joining the GID.

**ARTICLE 16 CHALLENGES**

16.1 If the Property's annexation or any portion thereof is challenged by a third party, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the Final Outcome of the challenge except as specified herein. "Final Outcome" means an action from which no appeal can be made or the time to appeal has expired. If the challenge results in the disconnection of the Property from the City, then this Agreement shall be null and void and of no further effect except as specified herein. The Owner and the City shall cooperate to cure any legal defects that resulted in any challenge, including any challenge that results in disconnection of the Property.

16.2 *Legal Discretion in the Case of Challenge.* The City reserves the right to not defend any legal challenge to this annexation. In the event such a challenge occurs prior to any expiration of any statute of limitation, the City may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense.

**ARTICLE 17. INDEMNIFICATION**

17.1 Owner understands and acknowledges that the annexation and zoning of the Property may be subject to challenge by the filing of litigation in a state or federal court. In the event of such challenge, the City will incur costs and expenses related to defense of same, including reasonable attorney's fees, filing fees, and court costs. Owner shall indemnify the City and shall pay all reasonable costs and expenses incurred by the City in any defense of the annexation and/or zoning of the Property, or of any other action determined necessary or desirable by the City in order to effectuate the annexation or zoning of the Property, or which are in any manner connected with City's enforcement of this Agreement. Owner further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the City's option to pay the attorney's fees for defense counsel of the City's choice for any such action. The City shall reserve and retain the right to

repeal, modify, or amend any or all ordinances or resolutions annexing or zoning the Property, and shall reserve and retain the right to settle, prosecute, litigate, and defend any such action in any manner and by any method that the City deems appropriate, desirable, or in its best interests. The City shall, to the extent practicable and convenient, consult with and advise the Owner of the progress of any defense.

17.2 Owner understands and acknowledges that the annexation and zoning of the Property may be subject to public referendum. In the event of the filing of a public referendum, the City may incur costs and expenses related to conducting a municipal election, including but not limited to costs and expenses of publication, printing, and mailing, reasonable attorney fees, and the costs of retaining the services of election judges. Owner shall indemnify the City and shall pay all reasonable costs and expenses incurred by the City in conducting such election, regardless of outcome; provided, however, that the City shall reserve and retain the right to repeal, modify, or amend any or all ordinances and resolutions annexing or zoning the Property or to take any other action the City deems appropriate, desirable, or in its best interests in the handling, consideration of the referendum petition and referendum election.

## **ARTICLE 18. MISCELLANEOUS**

18.1 *Recordation; Covenants; Assignment.* This Agreement shall be recorded with the Clerk and Recorder of Adams County. The provisions of this Agreement shall constitute covenants and servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of the Property, the Owner, his heirs, successors and assigns (including subsequent owners of the Property or any portion thereof). Except as provided in this Agreement, Owner shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to third parties acquiring an interest or estate in the Property including, but not limited to, purchasers or long-term ground lessees of individual lots, parcels, or of any improvements now or hereafter located upon or within the Property. Any such assignment or transfer must comply with the provisions of City of Commerce City Municipal Code, including the Commerce City Land Development Code, as amended from time to time.

18.2 *Costs.* The Owner will bear all costs and fees necessary for or associated with the annexation, zoning, inclusion in any district, and any development approval in connection with the Property, including without limitation the annexation petition, legal descriptions, maps, publication, notice, presentations, and recordation. The City shall not, in any event, be liable to the Owner for any costs or fees associated with the annexation or the failure of the annexation. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

18.3 *No Reliance.* The Owner acknowledges that the annexation and zoning of the Property are subject to the plenary legislative discretion of the City Council of the City of Commerce City and the rights of initiative and referendum reserved to its citizens. No assurances of annexation or zoning, or any development approval, incentive, or other condition, have been made to or relied upon by the Owner. If, in the exercise of its legislative discretion, and prior to the second reading of the annexation ordinance, the City fails to approve any proposed zoning, the sole and exclusive remedy of the Owner shall be the withdrawal of the annexation petition. This provision shall be effective upon the execution of this Agreement, notwithstanding the Effective Date of this Agreement, the failure of or challenge to the annexation, or the disconnection of the Property from the City.

18.4 *Police Power.* The Owner acknowledges that upon annexation the Property shall be subject to the same ordinances, rules, regulations, and policies as applicable to all other property presently situated within the boundaries of the City. Nothing in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental, or police powers to promote and protect the health, safety, morals, or general welfare of the City or its residents. This Agreement shall not prohibit the enactment by the City of any fee, charter provision, ordinance, resolution, rule, or regulation which is of uniform and general application.



18.5 *Incorporation of Exhibits.* **Exhibit A**, and **Exhibit B**, to this Agreement is attached and incorporated in this Agreement by reference.

18.6 *Amendment of Agreement.* This Agreement may be amended or terminated only by mutual consent in writing by the City and the Owner, his heirs, successors or assigns following the public notice and public hearing procedures required for the original approval and execution of this Agreement.

18.7 *Remedies.* In the event of a breach of default in performance of this Agreement, the parties shall have the remedies of specific performance. In no event shall the City be deemed to waive any rights existing or accruing to the City under the Colorado Governmental Immunity Act, nor shall the City be required to exercise its discretion to annex or zone the Property except as provided by law. In addition to any other remedies, the Owner acknowledges that the City may withhold or revoke any permits, approvals, or certificates for the Property or any structure or improvement within the Property as provided by law or in the event of a breach of this Agreement by the Owner. In no event may either party be entitled to claim or recover any form of damages, including economic, lost profits, punitive, or consequential.

18.8 *Costs & Attorneys' Fees.* If the Owner breaches this Agreement, the Owner shall pay the City's reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement. In the event of a challenge as defined in Articles 13 and 16 of this Agreement, the Owner shall pay its own and the City's reasonable costs and attorneys' fees incurred in defending the challenge.

18.9 *Titles of Sections.* The titles of the several articles and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

18.10 *Waiver.* The waiver of any breach of a term of this Agreement, including the failure to insist on strict compliance or to enforce any right or remedy, shall not be construed or deemed as a waiver of any subsequent breach of such term; any right to insist on strict compliance with any term; or any right to enforce any right or remedy with respect to that breach or any other prior, contemporaneous, or subsequent breach.

18.11 *No Third-Party Beneficiary.* No third-party beneficiary rights are created in favor of any person not party to this Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, their heirs, successors and assigns, including successor owners of any lot(s) or any other portion(s) of the Property, and nothing contained in this Agreement shall give rise to or allow any claim or right of action under this Agreement by any other person or party. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that the right of the Owner to receive, and the obligation of the City to pay, any credits or reimbursements hereunder shall accrue exclusively to the original parties to this Agreement, and shall not be assignable without the City's express written consent, and to any statutorily empowered districts created by the Owner pursuant to this Agreement, but to no others.

18.12 *Jurisdiction and Venue.* Jurisdiction and venue for any action to enforce or interpret the terms of this agreement shall be proper and exclusive in the District Court of Adams County, Colorado.

18.13 *Applicable Law.* The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement.

18.14 *Severability.* If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall, unless amended or modified by mutual consent of the parties, continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the party against whom they are being enforced under the facts and circumstances then pertaining.

18.15 *Counterparts*. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

18.16 *Addresses for Notice*. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City: Attn: Community Development  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Copy to: City Attorney  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

Owner: Attn Gilberto R. Carbajal Flores  
Address: 6912 East 53<sup>rd</sup> Place, Commerce City, CO 80022

(Signatures contained on next page(s).)

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be duly executed as of the day first above written.

CITY OF COMMERCE CITY, COLORADO

By: \_\_\_\_\_  
Jason Rogers, City Manager

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

OWNER:

Signature: \_\_\_\_\_  
*[Handwritten Signature]*

Printed Name: Gilberto R CARBAJAL FLORES

Title: OWNER

STATE OF Colorado )  
COUNTY OF Adams ) ss.

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of December, 2021, by  
Gilberto R. Carbajal Flores  
[Insert name of signer]

as owner  
[Insert title/authority of signer and name of Owner]

Witness my hand and official seal. Notary Public: \_\_\_\_\_  
*[Handwritten Signature]*

Address: 605 E. Mainway #101 <sup>39-165</sup> Commerce City CO 80022  
Street Number/Name City State Zip Code

(SEAL)

ALBERTO ARELLANO  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20134047513  
MY COMMISSION EXPIRES NOVEMBER 05, 2025

My Commission Expires: Nov. 05, 2025

# EXHIBIT "A" LAND DESCRIPTION

A PARCEL OF LAND, BEING ALL OF LOTS 43 TO 48 INCLUSIVE, BLOCK 46, IRONDALE SUBDIVISION, TOGETHER WITH THAT PORTION OF THE 15 FOOT ALLEY VACATED IN RESOLUTION FOR STREET VACATION RECORDED DECEMBER 28, 1992 IN BOOK 4004 AT PAGE 550, IRONDALE, AND SITUATED IN THE NORTHWEST ONE-QUARTER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ADAMS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 28, AS EVIDENCED BY A FOUND 2.5" ALUMINUM CAP, FROM WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 28, BEING A FOUND 3.25" ALUMINUM CAP, BEARS NORTH 89°25'25" EAST A DISTANCE OF 2641.02 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE NORTH 35°45'44" EAST A DISTANCE OF 1401.01 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 00°19'36" EAST ALONG THE CENTER LINE OF THE VACATED 15' ALLEY, RECORDED IN BOOK 4004 AT PAGE 550, A DISTANCE OF 150.02 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF EAST 86TH AVENUE; THENCE NORTH 89°25'25" WEST ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 100.72 FEET TO THE NORTHWEST CORNER OF THE LAND DESCRIBED AS A 7.57 FOOT RIGHT OF WAY IN RECEPTION NUMBER 2021000147383;


THENCE SOUTH 00°19'36" WEST ALONG THE WEST LINE OF SAID LAND, A DISTANCE OF 7.57 FEET;

THENCE NORTH 89°25'25" EAST ALONG THE SOUTH LINE OF SAID LAND, A DISTANCE OF 31.80 FEET TO THE SOUTHEAST CORNER OF SAID LAND;

THENCE SOUTH 00°19'36" WEST ALONG THE WEST RIGHT OF WAY LINE OF ROSEMARY STREET, A DISTANCE OF 142.45 FEET TO THE NORTHEAST CORNER OF LOT 42, BLOCK 46, IRONDALE SUBDIVISION;

THENCE SOUTH 89°25'25" WEST ALONG THE NORTH LINE OF SAID LOT 42, A DISTANCE OF 132.52 FEET TO THE CENTERLINE OF SAID ALLEY AND THE POINT OF BEGINNING.

CONTAINING 19,637 SQUARE FEET OR 0.451 ACRES MORE OR LESS

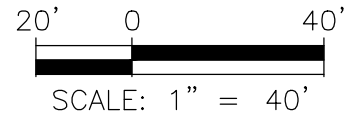
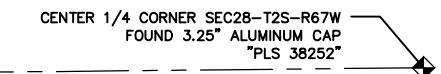
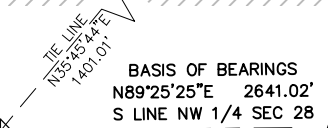
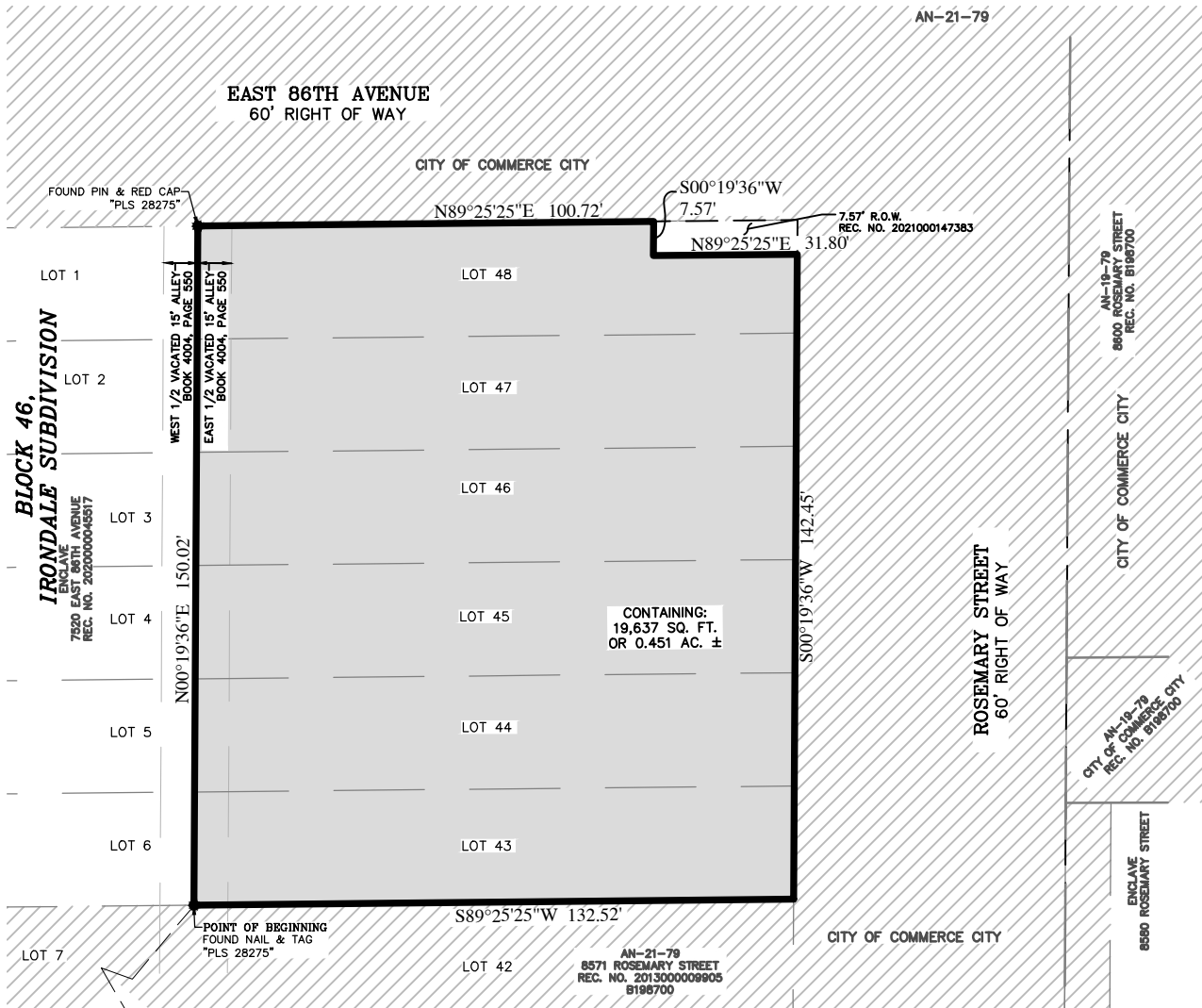
  
PREPARED BY: JEFFREY J. MACKENNA P.L.S. 34183 DATE: 02/21/2024  
FOR FALCON SURVEYING, INC.  
9940 WEST 25TH AVENUE  
LAKEWOOD COLORADO, 80215  
(303)202-1560



# EXHIBIT "A"

SITUATED IN THE NW 1/4, SECTION 28, T2S, R67W, OF THE 6TH P.M.  
COUNTY OF ADAMS, STATE OF COLORADO

AN-21-79



## LEGEND

	FOUND SECTION CORNER
	FOUND MONUMENT
	SECTION LINE
	PROPERTY BOUNDARY
	ADJACENT PROPERTY BOUNDARY
	PARCEL TO BE ANNEXED
	CITY OF COMMERCE CITY

PREPARED BY:  
JEFFREY J. MACKENNA P.L.S. 34183 DATE:  
FOR FALCON SURVEYING, INC. 02/21/2024  
9940 WEST 25TH AVENUE  
LAKEWOOD COLORADO, 80215  
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THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED SURVEY.  
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

# CARBAJAL AUTO DEALERSHIP

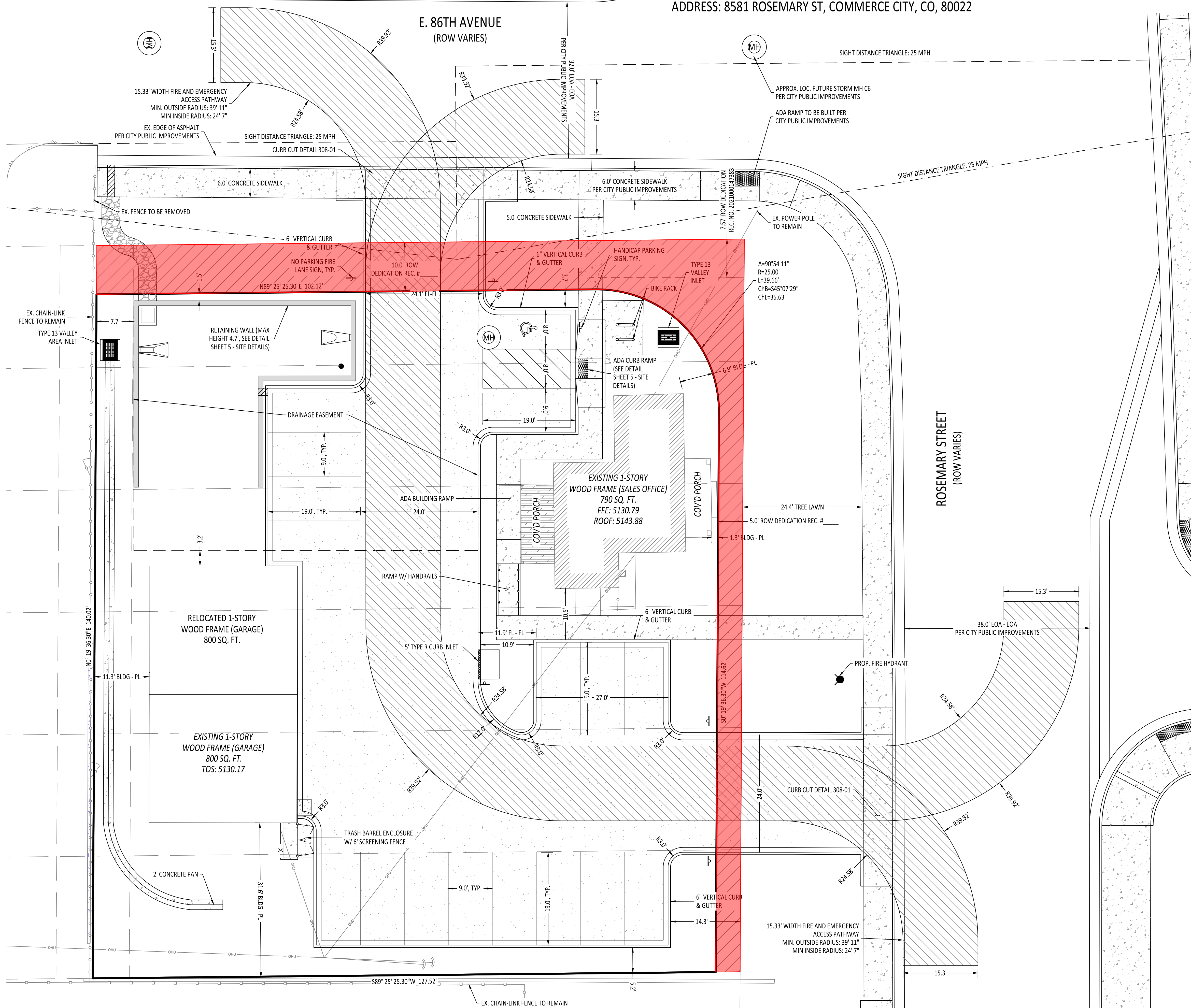
## DEVELOPMENT PLANS

LOCATED IN THE NORTHWEST 1/4 OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 67 WEST OF THE 6TH P.M.

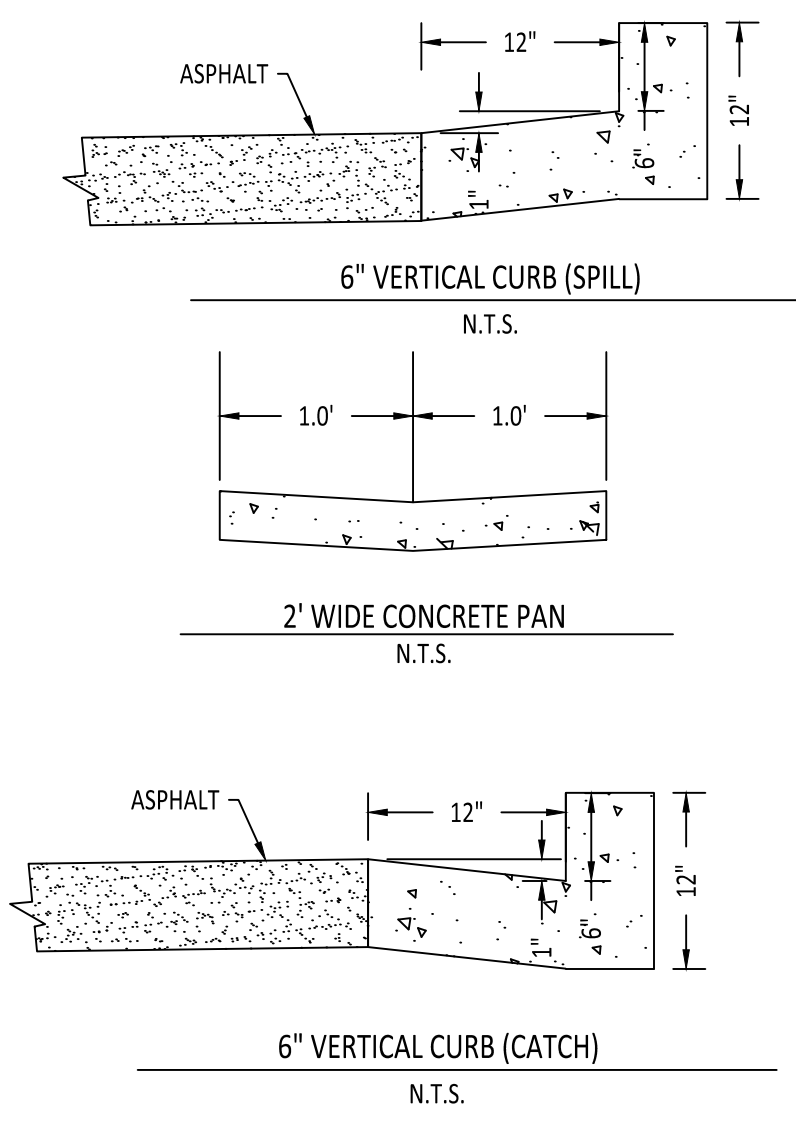
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO

ADDRESS: 8581 ROSEMARY ST, COMMERCE CITY, CO, 80022

EXHIBIT B



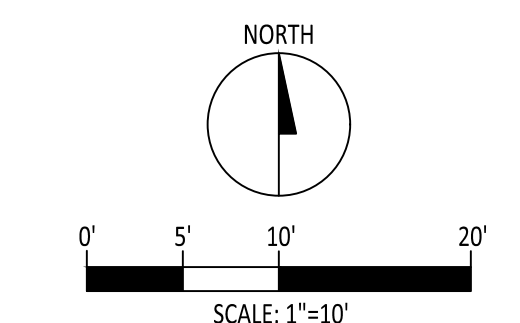
Subject Right-of-Way Dedication



- LIGHTING NOTE:**  
IN THE INTEREST OF COMPATIBILITY OF SURROUNDING LAND USES, ILLUMINATION OF ANY KIND ON PRIVATE PROPERTY SHALL BE DIRECTED AND CONTROLLED IN SUCH A MANNER SO THAT THERE SHALL BE NO DIRECT RAYS OF LIGHT WHICH EXTEND BEYOND THE BOUNDARIES FROM WHICH IT ORIGINATES.
- TRASH ENCLOSURE NOTE:**  
TRASH ENCLOSURES SHALL BE CONSTRUCTED TO A MINIMUM HEIGHT OF 6- FEET AND OF THE SAME OR COMPLIMENTARY MATERIAL AND COLOR AS THE MAIN BUILDING.
- SCREENING NOTE:**  
ROOF MOUNTED ELECTRICAL AND MECHANICAL EQUIPMENT SHALL BE PLACED OR SCREENED SUCH THAT THE EQUIPMENT IS NOT VISIBLE FROM ANY POINT. SUCH EQUIPMENT SHALL BE SCREENED WITH THE SAME MATERIALS AND COLORS AS THE MAIN BUILDING.
- SIGNAGE NOTE:**  
APPROVAL OF A SIGN PERMIT IS REQUIRED IN ADDITION TO DEVELOPMENT PLAN APPROVAL. SIGN LOCATIONS SHOWN ON THE DEVELOPMENT PLAN WILL BE REVIEWED FOR POSSIBLE CONFLICTS WITH SIGHT TRIANGLES AND EASEMENTS. THESE SIGNS WILL NOT BE APPROVED BY THE DEVELOPMENT PLAN REVIEW PROCESS OR APPROVAL OF THIS DEVELOPMENT PLAN. ALL SIGNS MUST CONFORM TO THE CITY'S STANDARDS.
- FENCING NOTE:**  
APPROVAL OF A FENCE PERMIT IS REQUIRED IN ADDITION TO DEVELOPMENT PLAN APPROVAL. ALL FENCES MUST CONFORM TO CITY STANDARDS.
- DOWNSPOUT NOTE:**  
NO ROOF DOWNSPOUT OUTFALLS WILL BE ALLOWED TO DRAIN OVER SIDEWALKS, BIKE PATHS, OR ANY OTHER PEDESTRIAN ROUTE.
- AMERICANS WITH DISABILITIES NOTE:**  
THE APPLICANT HAS THE OBLIGATION TO COMPLY WITH ALL APPLICABLE REQUIREMENTS OF THE AMERICAN DISABILITIES ACT. APPROVAL OF THIS DEVELOPMENT PLAN DOES NOT CONSTITUTE COMPLIANCE WITH THIS ACT.
- CONSTRUCTION NOTE:**  
THE APPROVAL OF THIS DEVELOPMENT PLAN DOES NOT CONSTITUTE FINAL APPROVAL OF GRADING, DRAINAGE, UTILITY, PUBLIC IMPROVEMENTS AND BUILDING PLANS. THESE PLANS MUST BE REVIEWED AND APPROVED BY THE APPROPRIATE AGENCY PRIOR TO THE ISSUANCE OF BUILDING PERMITS.
- UNDERGROUND UTILITY NOTE:**  
ALL OVERHEAD UTILITIES SERVING THIS SITE MUST BE PLACED UNDERGROUND PER THE LAND DEVELOPMENT CODE.
- FIRE LANES:**  
CURBS OUTSIDE OF PARKING SPACES ARE TO BE PAINTED RED TO INDICATE FIRE LANE.

**CITY STAFF CERTIFICATE:**  
APPROVED BY THE DEPARTMENT OF COMMUNITY DEVELOPMENT OF THE CITY OF COMMERCE CITY, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

DEPARTMENT OF COMMUNITY DEVELOPMENT



**LEGEND:**

- PROPERTY LINE
- ▨ ROW DEDICATION
- ADA ROUTE
- CONCRETE
- ASPHALT
- RETAINING WALL
- x- FENCE
- ⦿ DOWNSPOUT

**CARBAJAL AUTO DEALERSHIP**  
DEVELOPMENT PLANS  
CITY OF COMMERCE CITY, COUNTY OF ADAMS, STATE OF COLORADO

22-37

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NOT FOR CONSTRUCTION

REVISION BLOCK		
#	DATE	BY

**DEVELOPMENT PLAN**

2

SHEET 2 OF 16