

PERMANENT EASEMENT RESERVATION

This Reservation of Permanent Easement ("Reservation") is effective as of the effective date of the Ordinance No. _____ ("Vacation Ordinance").

Recitals

- A. Aslan Family Trust, whose address is 435 White Leaf Circle, Colorado Springs, Colorado 80906 and White Leaf LLC, whose address is 2353 Mesa Crest Grove, Colorado Springs, Colorado 80904 (collectively "Property Owner") own the real property described in "**Exhibit A**" attached hereto (collectively the "Property").
- B. A public right-of-way known as White Leaf Circle (the "Right of Way") was located on, over and through the Property.
- C. The City of Colorado Springs, a home rule city and Colorado municipal corporation, on behalf of its enterprise, Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, Colorado 80947-1015, ("City") having jurisdiction over the Right of Way, by and through its City Council has vacated the Right of Way by Ordinance subject to the reservation of the Permanent Easement described herein.
- D. There currently exist some utility Improvements installed within the Permanent Easement which serve Lots 1 and 6 of Weiss-Blatt Subdivision, which lots have previously been developed.
- E. City has determined that additional Improvements (as defined in Section 1 below) may need to be constructed, installed and maintained in the future in, through, over, under, and across the Permanent Easement, including when Lots 2-5 of Weiss-Blatt Subdivision develop.
- F. Property Owner and City hereinafter may each be referred to individually as a "Party" and collectively as "Parties."

Terms of Reservation

- 1. **Conveyance of Permanent Easement.** By Ordinance, the City has reserved a perpetual, non-exclusive permanent easement, the terms of which are described herein, to enter, occupy, and use the real property legally described in "**Exhibit B**" attached hereto ("Permanent Easement"), to construct, reconstruct, install, use, operate, maintain, repair, inspect, replace, upgrade, or remove one or more pipelines, conduits, poles, vaults, meters, regulator stations, switches, transformers, valves, hydrants, manholes, or any other utility structures (including, but not limited to, communication facilities, but expressly excluding any above-ground structures that would be inconsistent with use of the Permanent Easement for access and egress), and including all necessary cables, wires, and appurtenances thereto, including, but not limited to, electric or other control systems, cables, wires, connections, and surface appurtenances ("Improvements"), and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across such real property; provided however, to the extent reasonable and in compliance with best practices and City's rules, regulations and standards, City will place all new Improvements underground. In the event City is unable or unwilling to place one or more Improvements underground and it is possible to place the Improvements underground, City will give Property Owner notice and reasonable opportunity to agree to pay the additional costs associated with placing the Improvements underground. If Property Owner agrees to pay to underground Improvements, Property Owner's obligations to pay will be documented in a separate agreement.
- 2. **Easement Map.** The vacation plat attached hereto as "**Exhibit C**" is a graphic representation of the Permanent Easement. In the event of an ambiguity in Exhibit B, Exhibit C may be used to resolve said ambiguity.

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3. **Ingress and Egress.** To the maximum practicable extent, City shall use existing gates, roads, trails or facilities to access the Permanent Easement and avoid disruption of Property Owner's operations on the Property.
4. **Additional Construction.** City shall have the right, consistent with the provisions of Paragraph 1 above, to construct, reconstruct, install, use, operate, maintain, repair, inspect, replace, upgrade, or remove at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall be perpetual, and Property Owner shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Permanent Easement.
5. **Property Owner's Rights Unaffected.** Except as provided in Section 6 below, Property Owner shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of City in the Permanent Easement. Property Owner shall only perform or permit other persons or entities to perform construction or other work within the Permanent Easement after prior written approval by City and only if such construction or other work is performed in accordance with the terms of this Reservation, all applicable laws, rules and regulations, and City's rules and regulations as they may be modified from time to time. Property Owner reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing the following with written approval from City: pavement, curbs, gutters, sidewalks, parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again, such as, but not limited to: stone, brick, or other masonry type fences or walls), low-height landscaping, and sprinkler systems which are capable of being reasonably located by City ("Property Owner's Improvements"); provided however, that the exercise of such rights, in the reasonable opinion of City, does not injure or interfere with, now or in the future, any of the City's rights in the Permanent Easement including, but not limited to, City's rights of maintenance and reasonable access.
6. **Installations within Permanent Easement.** Property Owner shall not construct or place any permanent structure or building on any part of the Permanent Easement including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again; and except for garage-door porch stoops and only those retaining walls up to 4 feet in height that may be required to extend into the side lot-line easements of a residential property), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, play houses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining wall, or any edifice projections such as, but not limited to: balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, City may remove any structure or building constructed or placed within the Permanent Easement. If Property Owner constructs, places or permits any structure or building within the Permanent Easement, then Property Owner shall reimburse City for all expenses (including, but not limited to removal, court, collection, including reasonable attorney's fees and costs) associated with or arising from removing such structure or building. Despite anything herein to the contrary, if the City approves a projection into the Property's building-setback pursuant to section 7.4.102.F of the City Code ("Projection Approval"), then the Projection Approval shall be considered City's prior written consent to Property Owner's encroachment into the Permanent Easement as described in that Projection Approval, provided however, if City determines that (as a result of the Projection Approval) it is necessary to relocate any existing Improvements, then Property Owner acknowledges that such relocation shall be at the Property Owner's sole expense, regardless of the Projection Approval; and Property Owner shall grant to City any permanent easements required for the relocated Improvements. Moreover, in no event shall Property Owner:
 - a. construct or place, longitudinally along or otherwise within the Permanent Easement any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities or other utility or appurtenance without the prior written consent of City, except those which already exist as of the date of this Reservation; or
 - b. change, by excavation or filling, the present grade or ground level of the Permanent Easement without the prior written consent of City. Despite anything herein to the contrary, if the City approves Property Owner's grading plan for the Property ("Grading Plan Approval"), then the Grading Plan Approval shall be considered City's prior written consent to change the grade of the Permanent Easement as

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described in that Grading Plan Approval, provided that no Improvements exist within the Permanent Easement. Further, if City determines that (as a result of the Grading Plan Approval) it is necessary to relocate any existing Improvements, then Property Owner acknowledges that such relocation shall be at the Property Owner's sole expense, regardless of the Grading Plan Approval, and Property Owner shall grant to City any permanent easements required for the relocated Improvements.

Property Owner shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Permanent Easement unless the prior written consent of City is provided. Additionally, Property Owner shall not construct any new, or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Property, which might, in City's reasonable discretion, endanger or interfere with any Improvements, including, but not limited to, City's rights of maintenance and reasonable access, without the prior written consent of City.

7. **Surface Restoration to Land.** City shall replace, repair, or reimburse Property Owner for the reasonable cost of replacement or repair of physical damage to Property Owner's Improvements on the Property, whether or not within the Permanent Easement, but only if such damage is caused by City's construction, reconstruction, use, operation, maintenance, repair, inspect, replacement, upgrading, or removal of its Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, inspect, replacement, upgrading, or removal of its Improvements, City shall promptly restore, replace, or repair the surface of the Permanent Easement to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, City shall not be liable for damage to, nor shall it be obligated to repair or replace any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Permanent Easement in violation of the terms of this Reservation including, but not limited to, any tree(s) that interfere with the Improvements or City's rights in the Permanent Easement.
8. **Maintenance of Permanent Easement.** Property Owner shall be responsible for the surface maintenance of the easement; however, City shall have the perpetual right, but not the obligation, to cut, trim, control, and remove trees, brush, and other obstructions which injure or interfere with the City's use, occupation or enjoyment of the Permanent Easement, or City's right to construct, reconstruct, install, use, operate, maintain, repair, inspect, replace, upgrade, or remove its Improvements, without liability for damages arising there from, excluding those which already exist as of the date of this Reservation.
9. **Subjacent and Lateral Support.** Property Owner shall not impair any lateral or subjacent support for the Improvements.
10. **Nature of Easement and Additional Uses.** The Permanent Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. City's exercise of any rights in the Permanent Easement other than those retained by Property Owner shall be within the sole discretion of City. City shall permit and authorize such other uses of the Permanent Easement that are consistent with the uses described in paragraph 1 herein and not hereby reserved in Property Owner.
11. **Warranty of Title.** Property Owner warrants that it has good and merchantable title to the Property and has the full right and lawful authority to grant the Permanent Easement. Further, Property Owner warrants, promises, and agrees to defend City in the exercise of City's rights hereunder against any defect in Property Owner's title to the Property or Property Owner's right to grant the Permanent Easement.
12. **Indemnity/Liability.** Property Owner hereby releases City and shall fully protect, defend, indemnify and hold harmless City, the City, their officers, City Council, Utilities Board, directors, employees, agents and representatives from and against any and all claims, costs and fees (including but not limited to all fees and charges of engineers, architects, ~~attorneys~~, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature (including, but not limited to environmental) arising from or in connection with the Permanent Easement, Property Owner's

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Improvements, or the Improvements to the extent arising from or due to Property Owner's action(s) or failure(s) to act.

13. **Waiver.** The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.
14. **Governing Law and Jurisdiction.** This Resevation shall be construed in accordance with the laws of the State of Colorado, the Colorado Springs City Charter, City Code, Ordinances, Rules and Regulations. In the event of any dispute over this Resevation or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.
15. **Binding Effect.** Each and every one of the benefits and burdens of this Resevation shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors, transferees, agents, and assigns of the Parties.
16. **No Third Party Beneficiaries.** Except as expressly provided otherwise, this Permanent Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.
17. **Severability.** The provisions of this Resevation are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Resevation.
18. **Incorporation of Exhibits.** All exhibits described in and attached to this Resevation are herein incorporated by reference.
19. **Notice.** Any notice provided in accord with this Resevation, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid and return receipt requested to either the City at the address as shown below or to the property owner of record at the address in the El Paso County Assessor records ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice or if a Party refuses delivery then the date on which delivery is attempted. The City may change its address to which any Notice is to be delivered under this Resevation by giving Notice as provided herein.

City:

Colorado Springs Utilities:
Utilities Development Services
P.O. Box 1103, Mail Code 1812
Colorado Springs, CO 80947-1812

EXHIBIT A
Legal Description of Parent Parcels

Lots 1 through 6, Block 1, of Weiss-Blatt Subdivision Colorado Springs, Colorado

EXHIBIT B
Legal Description of Permanent Easement

All the right of way of White Leaf Circle contained within the plat of Weiss--Blatt Subdivision as recorded in Plat Book L-2 at page 14 under Reception number 640197 of the records of the El Paso County, Colorado Clerk and Recorder, in the City of Colorado Springs, El Paso County, Colorado; said tract contains 19,865 square feet or 0.46 acres, more or less.

EXHIBIT C
Vacation Plat (depiction of permanent easement)