

After recording, please return to:  
City and County of Denver  
1437 Bannock Street, Room 353  
Denver, CO 80202  
Attention: Karen Aviles



11-959

**EASEMENT**

This EASEMENT ("Easement"), is made this 20<sup>th</sup> day of December, 2011 by DENARGO MARKET L.P., a Delaware limited partnership ("Grantor"), whose legal address is 301 Congress Avenue, Suite 500, Austin, Texas 78701, Attention: M. Timothy Clark, to the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("City") whose legal address is 1437 Bannock Street, Denver, Colorado 80202.

**RECITALS:**

- A. Grantor is the owner of certain property commonly known as Denargo Market ("Grantor's Property") in Denver, Colorado.
- B. The City has an existing stormwater sewer line ("Existing Line") through portions of Grantor's Property.
- C. The City has requested that Grantor grant to the City an easement for the Existing Line and necessary surrounding property ("Existing Line Property") within Grantor's Property.
- D. Upon development of Grantor's Property, the Existing Line will be removed and a new line ("Relocated Line") will take its place in a different location within Grantor's Property for which the City already has an easement.
- E. This Easement will provide that when the Existing Line is removed and replaced by the Relocated Line, the Manager of Public Works of the City will terminate this Easement.
- F. Grantor desires to grant this Easement as more specifically set forth below.

**WITNESSETH:**

For and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor does hereby grant and convey to the City, a permanent, non-exclusive easement ("Easement") to locate, install, construct, inspect, operate, maintain, repair, remove, replace, relocate and reconstruct facilities for stormwater and related purposes, including related underground and surface facilities and appurtenances thereto ("Public Improvements"), into, within, over, upon, across, through and under the following described parcel of land ("Easement Property"):

**See Exhibit A attached hereto and incorporated herein.**

Grantor hereby warrants and covenants that Grantor has full right and lawful authority to grant the Easement and has fee simple title to the Easement Property.

The interest granted to City herein shall specifically include any after-acquired rights of Grantor in the Easement Property, to the extent of the Easement rights herein stated.

If ingress to and egress from the Easement Property from and to a public road or highway is not available, Grantor grants to City the right of ingress to and egress from the Easement Property over and across adjacent land owned by Grantor by means of roads and lanes thereon, if such exist, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to Grantor.

Grantor further grants to City the right from time to time to trim and to cut down and clear away any and all trees, brush and other obstructions now or hereafter on the Easement Property which now or hereafter in the reasonable determination of City's Manager of Public Works may be a hazard to the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation or reconstruction of the Public Improvements, or may interfere with the exercise of City's rights hereunder.

Grantor releases the City from any and all claims for damages arising in any way or incident to the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation and/or reconstruction by the City, or its agents, of the Public Improvements across the Easement Property and from the exercise by the City of any rights under this Easement ("Claims") unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City.

Except as otherwise provided herein, Grantor, its successors and assigns, reserves the right to fully use and enjoy the Easement Property, so long as such use and enjoyment shall not interfere with the location, installation, construction, inspection, operation, maintenance, repair, removal, replacement, relocation and reconstruction of the Public Improvements installed or permitted to be installed by City on the Easement Property. Grantor covenants and agrees that, effective as of the date of this Easement, the Grantor shall not erect, install, place or permit any building, structure, wall, fence, tree, or other below- or above- ground obstruction upon the Easement Property.

Grantor shall not be responsible for the restoration of landscaping, irrigation systems, pavement and sidewalks due to the City's activities under this Easement. The City shall restore any such landscaping, irrigation systems, pavement and sidewalks disturbed due to the City's activities under this Easement to a condition similar to what it was prior to the City's activities, except as necessarily modified to accommodate the Public Improvements.

In the event the terms of this Easement are violated, such violation shall immediately be corrected by Grantor upon receipt of written notice from the City's Manager of Public Works or, if Grantor does not correct the violation within the time designated in such notice, the City may elect to correct or eliminate such violation at the Grantor's expense. The Grantor shall promptly

reimburse the City for all costs and expenses incurred by the City in enforcing the terms of this Easement.

The provisions of this Easement shall inure to the benefit of and bind the successors and assigns of the Grantor and City. All covenants stated in this Easement shall apply to and run with the land.

Upon the removal of the Existing Line and the construction of the Relocated Line by Grantor, and the acceptance of the Relocated Line by the Manager of Public Works of the City, the Manager of Public Works of the City shall execute and record a document relinquishing its rights under and terminating this Easement and shall take such other actions necessary to accomplish such termination, without further City Council approval.

*[remainder of this page intentionally blank; signature page follows]*

IN WITNESS WHEREOF, Grantor has executed this Easement as of the day and year first above written.

**GRANTOR:**

DENARGO MARKET L.P.,  
a Delaware limited partnership

By: Cypress Denargo GP, LLC,  
a Delaware limited liability company,  
its general partner

By: [Signature]  
Name: M. Timothy Clark  
Title: President

STATE OF TEXAS )

) ss.

COUNTY OF Travis )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of Sept, 2011, by M. Timothy Clark, as President of Cypress Denargo GP, LLC, a Delaware limited liability company, as general partner of Denargo Market, L.P. a Delaware limited partnership.

Witness my hand and official seal.

[Signature]  
Notary Public

My Commission expires: 12/29/2014

