

EASEMENT

(Cherry Tree Estates – Private Roads)

This EASEMENT (this "Easement") is made and given, as of the date set forth on the City's signature page below (the "Effective Date"), by the **CITY AND COUNTY OF DENVER**, a home rule city and municipal corporation (the "City"), to **CHERRY TREE ESTATES, LLC**, a Colorado limited liability company ("Grantee").

RECITALS

- A. Grantee owns the real property located at 1700 S Quebec Street in the County of Arapahoe, State of Colorado, as more particularly described on Exhibit A attached hereto (the "Grantee's Property").
- B. The Grantee's Property does not abut a publicly dedicated road, and therefore Grantee has requested from the City an easement over certain City owned land for access to and from the publicly dedicated roads known as S. Quebec Street and E. Colorado Avenue.
- C. In connection with its development of the Grantee's Property, Grantee has designed and intends to install and maintain private roads to the Grantee's Property (the "Private Roads"). Grantee wishes to install the Private Roads on (2) strips of land which are owned by the City and abut the public right of ways of S. Quebec Street and E. Colorado Avenue (the "City Land").
- D. The manner of Grantee's installation of the Private Roads shall be completed according to the plans and specifications referred to on Exhibit B attached hereto (the "Plans").
- E. To the extent any portion of the Private Roads shall encroach onto the public right of ways, Grantee's activities will be subject to the Rules and Regulations relating to Encroachments in the Public Right of Way, dated December 15, 2014, administered by the City's Department of Public Works (referred to herein, together with any other applicable rules, codes, ordinances, or regulations relating to such activities, as the "MEP Rules").
- F. The areas on the City Land where the Public Roads will be located are legally described and depicted on Exhibit C attached hereto (the "Easement Areas").
- G. The City and Grantee now wish to provide for the use of the Easement Areas by the Grantee as needed for the installation, use, maintenance and repair of the Private Roads within the Easement Areas on, and subject to, the terms and conditions set forth in this Easement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Grantee and the City do hereby promise and agree as follows:

1. **RECITALS.** The Recitals set forth above are hereby incorporated herein and made part of this Easement.

2. **GRANT.** As of the Effective Date, the City hereby grants to Grantee a perpetual, non-exclusive easement to use and occupy the Easement Areas for the following purposes (the "Work"):
- A. for the initial installation of the Private Roads, including curb and gutter, in the Easement Areas, which work must be completed within a period of seven (7) months after the date on which Grantee notifies the City Rep (as defined below) that the work will immediately commence (the "Start Date"), which completion day will be extended as necessary to account for delays caused by force majeure;
 - B. for the use, maintenance, and repair of the Private Roads in the Easement Areas; and
 - C. for landscaping within the Easement Areas designed to complement the appearance of the Private Roads and for irrigation for such landscaping.

Grantee acknowledges and agrees that the exercise of the foregoing rights (referred to herein collectively as the "Easement Rights") shall be in accordance with, and subject to, the terms and conditions set forth in this Easement. This grant of an Easement is subject to all existing easements, licenses and encumbrance of public record on the Easement Areas, any existing utilities and drainage systems located on the Easement Areas (even if there is no recorded document), and the legal rights and obligations the City may have with respect to the Cherry Creek and the City's designated open space. This Easement does not authorize Grantee to enter upon, or make any use of, any property other than the Easement Areas and for only those purposes identified as the Easement Rights.

3. **COMPENSATION.** In consideration of the City granting the Easement Rights to Grantee, prior to the Effective Date, Grantee shall pay the City the sum of \$57,546.45 (\$4.50 per square foot).
4. **CITY RETAINED RIGHTS.** The City retains the right to use, occupy, enjoy, grant other interests, and in all other ways govern and control the Easement Areas and any adjacent City owned land and right-of-way so long as such use and occupancy is consistent with and does not materially impair Grantee's use of the Easement Areas and the Easement Rights granted hereby. Notwithstanding the foregoing, the City, acting through its Managers of Public Works and Parks and Recreation (the "Managers"), retains the right, at the Managers' reasonable discretion, to require the Private Roads to be relocated or to otherwise modify, reconfigure, or change the Private Roads within the Easement Areas, all at City's sole cost and expense. The foregoing relocation and modification rights are subject to the following conditions:
- A. as reasonably determined by the City, the Private Roads as so relocated, modified, reconfigured, or changed shall be such as to provide reasonably similar access and quality of access as that provided by this Easement prior to such relocation, modification, reconfiguration, or change;
 - B. the Private Roads as relocated shall provide Grantee ingress and egress to and from South Quebec Street and East Colorado Avenue and the Grantee's Property;
 - C. the holders or beneficiaries of any liens or encumbrances burdening the real property onto which the Private Roads are relocated shall consent in writing to this Easement as relocated and agree to honor and be bound by the terms of this Easement;
 - D. City shall use its best efforts to make such relocation, modification, reconfiguration, or change in such a manner and by such means so as to cause the least possible inconvenience or interruption of Grantee's right to use this Easement as provided herein; and
 - E. for any relocation or portion thereof which is outside of the Easement Areas, the terms of this

Easement shall govern such areas and an amendment to this Easement with an amended Exhibit C will be recorded at such time of relocation or modification of Easement Areas; provided, however, Grantee shall not be required to pay to the City any additional compensation for any areas outside of the Easement Areas.

The City retains the right to control, monitor, and establish procedures applicable to Grantee's use of the Easement Areas. The City retains the right, at the Managers' sole discretion, to impose and require additional terms or conditions, including charging to Grantee costs or expenses incurred by the City, should Grantee fail to comply with this Easement. Except as otherwise provided herein, the City retains the right to use and occupy the Easement Areas insofar such use and occupancy is consistent with and does not materially impair the Grantee's use of the Easement Areas.

5. **COSTS.** Grantee shall be responsible for all costs and expenses associated with the installation, use, maintenance, repair and replacement of the Private Roads (including the initial installation of the Private Roads) and the performance of its rights and obligations under this Easement. The City shall not be responsible for any costs or expenses associated with the Private Roads or this Easement.

6. **BASIC TERMS & CONDITIONS.**

A. Compliance with Laws. Grantee shall provide or obtain and maintain all notices, permits, Easements, consents, permissions, and approvals required by any governmental or quasi-governmental entity prior to commencing the Work or any activities on the Easement Areas. Grantee hereby acknowledges that any and all activity on or about the Easement Areas shall require Grantee to obtain in advance and comply with a Temporary Construction Access Permit ("TCAP") with the City's Public Works Department. Any required manifest, approval, license or permit shall be issued in Grantee's name. Grantee hereby acknowledges and agrees that it is bound by and shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and policies, and the terms and conditions set forth in the Plans and all other applicable plans, specifications, permits, permissions, consents, and approvals, including, without limitation, the MEP Rules and all applicable TCAPs, in connection with the Work and any activity undertaken by or on behalf of Grantee on the Easement Areas or any other City-owned property.

B. City Representative. Katherine Rinehart of the City's Division of Real Estate (the "City Rep") shall be Grantee's contact for coordination of the Work of Grantee under this Easement. Grantee shall take all reasonable measures to keep the City Rep informed of the progress of the work and related activities, and any emergencies, in accordance with this Easement and to comply with the directions and requirements of the City Rep, including any order to suspend work or to cease and desist in any unauthorized activities. Except in the case of an emergency, at least 10 days prior to entering onto the Easement Areas and performing any Work, Grantee shall provide written notice to the City Rep with evidence that all necessary permits, permissions, and approvals have been obtained and the dates for the start and completion of any Work. All Work shall be performed in accordance with all permits, permissions, and approvals and to the reasonable satisfaction of the City Rep.

C. Grantee and its Contractors. All contractors, subcontractors, consultants, suppliers, laborers and agents retained by or on behalf of Grantee to perform some portion of the Work or to undertake any activities on or about the Easement Area shall be regarded as being the "Grantee" under this Easement, shall be subject to the terms and conditions of this Easement, and shall be identified (by name, address, telephone number, and email address) in a prior written notice to the City

Rep, and this contact list shall be updated as needed. At no time shall Grantee, its officials, employees, contractors, subcontractors, consultants, suppliers, laborers or agents be regarded as working for the City in any capacity nor shall they be regarded in any manner as being employees or contractors of the City.

- D. Restoration. Grantee shall not damage, destroy or harm any improvements adjacent to the Easement Areas or other City-owned land and shall promptly repair, replace or restore, to a condition similar to that which existed prior to the commencement of the Work, to the satisfaction of the City Rep, any improvements or other conditions damaged by Grantee as the result or in relation to the Work performed (the "Restoration").
- E. Utilities. Grantee shall be solely responsible for locating and taking appropriate measures to protect all overhead, above ground and underground utilities, including without limitation gas, electrical, sewer, water, telephone, and cable, during the Work on or about the Easement Areas and any other City-owned land. Grantee shall arrange for the timely and complete location of all utilities in accordance with law; shall take all necessary precautions to avoid damage to, or injury from, such utilities; and shall be liable for all damages resulting from any contact with or destruction of such utilities. The City Rep will provide, upon request, any drawings or other documents it may have regarding the existence of such utilities on the Easement Areas or other City-owned land, but the City expressly disclaims the reliability or accuracy of any such drawings or documents it may provide to Grantee.
- F. Grantee's Personal Property. Grantee shall take reasonable measures to secure its Personal Property (defined below) located on the Easement Areas from public access or tampering and for the protection of public health and environment during the Work. The City assumes no liability for public misconduct, theft or vandalism. Upon the completion of any Work, Grantee shall promptly remove from the Easement Areas all equipment, vehicles, temporary structures, road base, excess soil and rocks, chemicals, signs, barriers, materials, supplies, construction debris, and waste brought on site or generated by Grantee on site in connection with the Work ("Personal Property") and shall do so in compliance with federal, state and local regulatory requirements, standards, and guidelines. Alternatively, if Grantee fails to remove any item of Personal Property as provided herein, the City may perform such removal and Grantee shall promptly reimburse the City for all reasonable costs incurred in connection therewith.
- G. Environmental Considerations.

(1) Grantee Responsible. With respect to Grantee's use of the Easement Areas under this Easement, Grantee accepts the Easement Areas "as is," with all existing physical and environmental conditions. Grantee shall be solely liable for all costs and expenses associated with any Hazardous Materials, as defined below, that Grantee brings onto the Easement Areas or other City-owned land or that are exposed or otherwise requiring remedial action as a consequence of the Work. Grantee shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the Work (collectively, the "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term "**Hazardous Materials**" shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42

U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this Paragraph 4(I)(1) shall survive the expiration or revocation of this Easement.

(2) Grantee's Obligations. Grantee shall (i) assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by Grantee in the course of the Work or related activities; (ii) use best efforts to minimize the volume of Hazardous Materials associated with the work or related activities on or about the Easement Areas or other City-owned land, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste; (iii) will not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Easement Areas or other City-owned land; and (iv) remove all Hazardous Materials and other waste associated with the Work or related activities from the Easement Areas and any other City-owned land. City shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the Work.

(3) Soils Management. To the extent soil is excavated during the Work which soil contains Hazardous Materials or solid waste must be removed from the Easement Areas and other City-owned land and legally disposed of in accordance with Paragraph 4(I)(2) above. Excavated soil which does not contain Hazardous Materials or solid waste may be reused as backfill or re-grading on the Easement Areas or other City-owned land provided there are no field indications of contamination such as odors, staining, or organic vapor meter readings above background. Any soil brought on the Easement Areas or other City-owned land by Grantee for fill or grading purposes must be free of Hazardous Materials and solid waste and must meet Colorado Department of Public Health and Environment criteria for unrestricted use as demonstrated by analytical testing data. Determinations as to the existence of Hazardous Materials and solid waste and suitability of soil to be brought into the Easement Areas shall be made by the City Rep in consultation with the City's Department of Public Health and Environmental.

7. INSURANCE.

A. General Conditions. Grantee shall secure, on or before the Effective Date, the following insurance covering all Work and related activities under this Easement. Grantee shall keep the required insurance coverage in force at all times during the term of this Easement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to the City. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If such written notice is unavailable from the insurer, Grantee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s). Additionally, Grantee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in

excess of a deductible or self-insured retention, the City must be notified by Grantee. Grantee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Easement are the minimum requirements, and these requirements do not lessen or limit the liability of Grantee. Grantee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Easement.

- B. Proof of Insurance. Grantee shall provide a copy of this Easement to its insurance agent or broker. Except as authorized by a permit previously issued to Grantee, Grantee may not commence Work under this Easement prior to placement of coverage. Grantee certifies that the certificate of insurance attached as Exhibit D, preferably an ACORD certificate, complies with all insurance requirements of this Easement. The City may require additional proof of insurance, including but not limited to policies and endorsements.
- C. Additional Insureds. For Commercial General Liability, Business Auto Liability, and Contractors Pollution Liability, Grantee's insurer(s), and any subcontractors' insurer(s), shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- D. Waiver of Subrogation. For all coverages, Grantee's insurer shall waive subrogation rights against the City.
- E. Contractors and Consultants. All of Grantee's contractors, consultants, subcontractors and subconsultants (including independent contractors, suppliers or other entities performing Work under this Easement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Grantee. Grantee shall include all such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Grantee shall provide proof of insurance for all such subcontractors and subconsultants upon request by the City.
- F. Workers' Compensation/Employer's Liability Insurance. Grantee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Grantee expressly represents to the City, as a material representation upon which the City is relying upon in issuing this Easement, that, to the extent Grantee has the power to control same, none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Easement, and that any such rejections previously effected, have been revoked as of the date the Grantee signs this Easement.
- G. Commercial General Liability. Grantee shall maintain a Commercial General Liability insurance policy with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- H. Business Automobile Liability. Grantee shall maintain Business Automobile Liability with limits of at least \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing the work under this Easement. If transporting hazardous material or

regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

- I. Contractors Pollution Liability Including Errors and Omissions. If the transportation of hazardous material or regulated substances is not covered under this Easement, Grantee shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include coverage for errors and omissions, bodily injury, property damage, defense costs, cleanup costs, and completed operations.
- J. Additional Provisions.

(1) For Commercial General Liability and Contractors Pollution Liability, the policies must provide the following: (a) that this Easement is an Insured Contract under the policy; (b) defense costs are outside the limits of liability; (c) a severability of interests or separation of insureds provision (no insured v. insured exclusion); and (d) a provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) Grantee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the Grantee's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Grantee shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

8. **DEFENSE & INDEMNIFICATION.**

- A. Indemnification. Grantee shall defend, indemnify, and hold harmless the City, its appointed and elected officials, employees and agents, against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from or relating to the exercise of this Easement, any work performed or activities undertaken by or on behalf of Grantee, or financial liability incurred by Grantee in relation to this Easement, and Grantee's, its agents', employees', contractors', guests' and invitees' occupancy or use of any portion of the Easement Areas or any other City-owned property ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the negligence or willful misconduct of the City. This indemnity and duty to defend shall be interpreted in the broadest possible manner to indemnify and protect the City for any acts or omissions of the Grantee, either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.
- B. Duty to Defend. Grantee's duty to defend and indemnify City shall arise (i) at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim; and (ii) even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- C. Payment of Expenses. Grantee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any reasonable expenses incurred by reason of such Claims including, but not limited to, court costs

and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

- D. Not Limited by Insurance Coverage. Insurance coverage requirements specified in this Easement shall in no way lessen or limit the liability of Grantee under the terms of this indemnification obligation. Grantee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- E. Survival. This defense and indemnification obligation shall survive the expiration or revocation of this Easement.
- F. Claims Related to Work. Grantee shall be solely responsible for all compensation or restitution for injuries to persons or damage to or loss of property or other Claims belonging to persons arising from, or related to, any of the Work or other actions undertaken by or on behalf of Grantee. The term "persons" shall include, without limitation, City officials, employees, volunteers, consultants, contractors, and agents.
9. **GOVERNMENTAL APPROVALS AND CHARGES.** Grantee shall obtain and maintain, at its sole cost, and comply with all permits or licenses (federal, state, or local) required for the Work to be performed under this Easement. Grantee shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to the Work and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to the Work. The City shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the Work. Grantee hereby indemnifies and saves harmless the City to the extent of any and all liability for fees, charges, taxes, late charges, penalties or fines resulting from Grantee's failure to comply with this Paragraph 9. This indemnification obligation shall survive the revocation or termination of this Easement.
10. **LIENS & OTHER ENCUMBRANCES.** Grantee shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon the Easement Areas or any other City-owned land due any worker for labor performed or materials or equipment furnished by any person or legal entity to or on behalf of Grantee, either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the Work. Grantee shall promptly pay when due all bills, debts and obligations incurred in connection with the Work performed under this Easement and shall not permit the same to become delinquent. Grantee shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City to the Easement Areas or other City-owned land. Grantee hereby indemnifies and saves harmless the City to the extent of any and all liability for payments, expenses, interests, and penalties resulting from Grantee's failure to comply with this Paragraph 10. This indemnification obligation shall survive the revocation or termination of this Easement.
11. **NOTICES.** All notices required to be given to the City or Grantee hereunder shall be in writing and delivered by personal delivery, commercial overnight courier, or certified mail, return receipt requested, to:

City: Executive Director/Manager Department of
Public Works
201 West Colfax Ave., Dept. 608
Denver, Colorado 80202

Department of Finance
Director of Real Estate
201 W. Colfax Avenue, Dept. 1010
Denver, CO 80202

Denver City Attorney's Office Department of
Public Works
201 West Colfax Ave., Dept. 608
Denver, Colorado 80202

Grantee: Cherry Tree Estates, LLC
P.O. Box 1352
Arvada, Colorado 80001 Attention: Timothy
VanMeter

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed, delivered to the overnight courier, or personally delivered to Grantee or the City. Daily communications and coordination between the City Rep and the representative of Grantee and its contractor may be telephone or email, if so allowed under this Easement and as agreed by these representatives.

12. **GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Easement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the City against third parties by law.
13. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the work under this Easement, Grantee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and Grantee further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.
14. **REMEDIES AND VENUE.** In the event Grantee defaults hereunder, City shall have all remedies available at law or in equity against Grantee by virtue of such default. Grantee's exclusive remedy against the City shall be for specific performance and Grantee does hereby waive all other remedies at law or in equity including damages. Venue for any action under this Easement shall be in the District Court for the City and County of Denver.
15. **AMENDMENT.** Except as otherwise expressly provided in this Easement, this Easement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Easement.
16. **SEVERABILITY.** If any term or provision of this Easement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the

Easement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either party in entering this Easement, the parties shall work together, in good faith, to come up with an amendment to this Easement that substantially satisfies the previously intended consideration while being in compliance with Applicable Law and the judgment of the court.

17. **AUTHORITY TO EXECUTE.** The person signing for Grantee warrants that he or she has the complete authority to sign on behalf of and bind Grantee.
18. **APPROPRIATION:** All obligations of the City hereunder are subject to the prior appropriation of funds for such purposes by the Denver City Council and encumbrance thereof.
19. **RECORDING.** This Easement may be recorded in the Denver County real property records.
20. **SUCCESSORS AND ASSIGNS; RUNNING WITH THE LAND.** The provisions of this Easement shall inure to the benefit of and bind the successors and assigns of the parties and all covenants herein shall apply to, burden, inure to the benefit of and run with both the Grantee's Property and the City Land, as applicable.
21. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Grantee consents to the use of electronic signatures by the City. This Easement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of this Easement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Easement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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SIGNATURE BLOCKS BEGIN ON NEXT PAGE.]**

Contract Control Number:
Contractor Name:

FINAN-201950436-00
Cherry Tree Estates, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

Mayor

Clerk and Recorder, Ex-Officio Clerk of the City
and County of Denver

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By:

Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By:

Manager of Finance

By:

Auditor

Contract Control Number:
Contractor Name:

FINAN-201950436-00
Cherry Tree Estates, LLC

By: See attached signature page

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

CHERRY TREE ESTATES, LLC, a Colorado limited liability company

By: *[Signature]*
Name: Timothy R Van Deter
Title: MANAGING member

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me on September 12th, 2019
by Timothy R Van Deter MANAGING member of Cherry Tree Estates,
LLC, a Colorado limited liability company.

Denise R. Hawkins

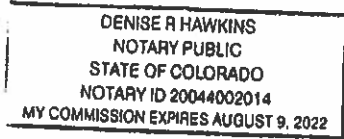


EXHIBIT A
GRANTEE'S PROPERTY - CHERRY TREE ESTATES

A PART OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SAID SECTION 21 THE SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHWEST ONE- QUARTER OF SOUTHWEST ONE-QUARTER, A DISTANCE OF 834.64 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF CHERRY CREEK RECORDED IN BOOK 372 AT PAGE 568 AND 570; THENCE ON AN ANGLE TO THE RIGHT $127^{\circ}01'56''$ AND ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 1393.30 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST ONE- QUARTER OF THE SOUTHWEST ONE-QUARTER; THENCE ON AN ANGLE TO THE RIGHT $143^{\circ}11'56''$ AND ALONG SAID NORTH LINE, A DISTANCE OF 1112.28 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 464,173 SQUARE FEET (10.65 ACRES) MORE OR LESS.

Exhibit B

As depicted in Cherry Tree Estates Private Roads Plans
DES Project Number [2007-0269]

2019-DEDICATION-0000070-2007-0269

LAND DESCRIPTION

A PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH 1/16 CORNER OF SECTION 20-21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN; THENCE SOUTH 89°50'49" EAST, ALONG THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, A DISTANCE OF 153.58 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 53°02'49" WEST A DISTANCE OF 104.53 FEET TO THE EAST LINE OF SOUTH QUEBEC STREET,
THENCE NORTH 00°01'17" EAST, ALONG SAID EAST LINE, A DISTANCE OF 48.77 FEET TO NORTHEASTERLY LINE OF CHERRY CREEK AS DESCRIBED IN BOOK 372 AT PAGES 568 AND 570 OF THE ARAPAHOE COUNTY RECORDS;
THENCE SOUTH 53°02'32" EAST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 320.30 FEET;
THENCE NORTH 89°50'49" WEST A DISTANCE OF 25.02 FEET TO A POINT OF CURVE;
THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 35°24'31", A RADIUS OF 120.50 FEET AND AN ARC LENGTH OF 74.47 FEET (CHORD BEARS NORTH 72°08'33" WEST, 73.29 FEET);
THENCE NORTH 53°02'49" WEST A DISTANCE OF 97.18 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 10,732 SQUARE FEET (0.25 ACRES) MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN AS BEARING S89°50'49"E. BEARING CALCULATED FROM STATIC GPS OBSERVATIONS AT THE WITNESS CORNERS FOR THE S 1/16 CORNER OF SECTION 20-21 AND THE SW 1/16 CORNER OF SECTION 21.

PREPARED BY:
ALAN H. BAILEY PLS No. 38035
ON BEHALF OF:
BAILEY PROFESSIONAL SOLUTIONS, LLC
5737 SOUTH KENTON STREET
ENGLEWOOD CO 80111
303.587.1672



PROJECT	TVM-17-01 CHERRY TREE ESTATES
FILE	TEP-WEST.DWG
CHECKED	AHB DRAWN RJE DATE 6/28/19

bps | BAILEY
PROFESSIONAL
SOLUTIONS

BAILEY PROFESSIONAL SOLUTIONS LLC
5737 SOUTH KENTON STREET
ENGLEWOOD CO 80111
303.587.1672
BAILEYPROFESSIONALSOLUTIONS.COM

LAND DESCRIPTION

A PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE SOUTH 1/16 CORNER OF SECTION 20-21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN; THENCE SOUTH 69°50'49" EAST, ALONG THE NORTH LINE OF SAID SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, A DISTANCE OF 218.62 FEET TO THE NORTHEASTERLY LINE OF CHERRY CREEK AS DESCRIBED IN BOOK 372 AT PAGES 568 AND 570 OF THE ARAPAHOE COUNTY RECORDS; THENCE SOUTH 63°02'32" EAST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 1,327.16 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE, SOUTH 53°02'32" EAST, A DISTANCE OF 198.26 FEET TO A POINT OF NON-TANGENT CURVE;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 217°29'24", A RADIUS OF 50.00 FEET AND AN ARC LENGTH OF 189.80 FEET (CHORD BEARS NORTH 78°19'28" WEST, 94.70 FEET);

THENCE NORTH 26°14'03" WEST A DISTANCE OF 10.65 FEET;

THENCE NORTH 53°01'45" WEST A DISTANCE OF 32.44 FEET TO A POINT OF NON-TANGENT CURVE;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 53°28'46", A RADIUS OF 87.87 FEET AND AN ARC LENGTH 82.11 FEET (CHORD BEARS NORTH 26°17'25" WEST, 79.16 FEET) TO THE POINT OF BEGINNING.

PARCEL CONTAINS 10,516 SQUARE FEET (0.24 ACRES) MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN AS BEARING S89°50'49"E. BEARING CALCULATED FROM STATIC GPS OBSERVATIONS AT THE WITNESS CORNERS FOR THE S 1/16 CORNER OF SECTION 20-21 AND THE SW 1/16 CORNER OF SECTION 21.

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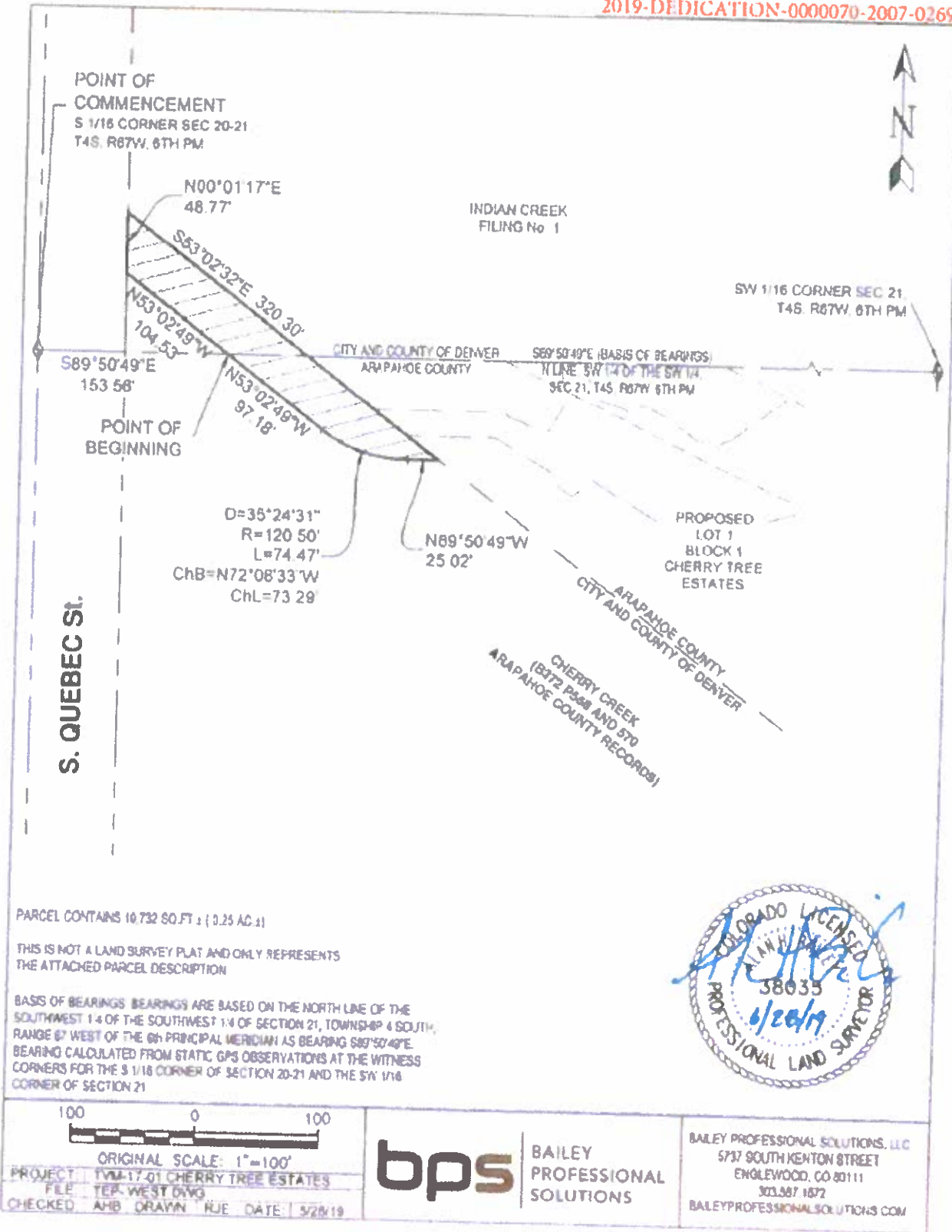
PROJECT:	TVM-17-01 CHERRY TREE ESTATES
FILE:	TEP- EAST DWG
CHECKED:	AHB DRAWN: RJE DATE: 5/28/19

bps BAILEY PROFESSIONAL SOLUTIONS

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EXHIBIT C EASEMENT AREAS

2019-DEDICATION-0000070-2007-0269



S. QUEBEC ST.



POINT OF COMMENCEMENT
S 1/16 CORNER SEC 20-21,
T4S, R67W, 6TH PM

INDIAN CREEK
FILING No 1

SW 1/16 CORNER SEC 21,
T4S, R67W, 6TH PM

S89°50'49"E
218.62'

CITY AND COUNTY OF DENVER
ARAPAHOE COUNTY N LINE, SW 1/4 OF THE SW 1/4,
SEC 21, T4S, R67W, 6TH PM

ARAPAHOE COUNTY CITY AND COUNTY OF DENVER
CHERRY CREEK (B372 P888 AND 570 ARAPAHOE COUNTY RECORDS)

PROPOSED CHERRY TREE ESTATES

POINT OF BEGINNING

INDIAN CREEK
FILING No. 1

S53°02'32"E
1327.15'
D=53°28'46"
R=87.97'
L=82.11'
ChB=N26°17'25"W
ChL=79.16'

S53°02'32"E
198.26'

COLORADO AVE.
(70' ROW PER INDIAN CREEK FILING No. 1)

N53°01'45"W
32.44'
W 1/16 CORNER SEC 21-28,
T4S, R67W, 6TH PM
N26°14'03"W
10.65'

INDIAN CREEK
FILING No 10

D=217°29'24"
R=50.00'
L=189.80'
ChB=N78°19'28"W
ChL=94.70'



PARCEL CONTAINS 10,516 SQ. FT. (0.24 AC.±)

THIS IS NOT A LAND SURVEY PLAT AND ONLY REPRESENTS THE ATTACHED PARCEL DESCRIPTION.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6th PRINCIPAL MERIDIAN AS BEARING S89°50'49"E. BEARING CALCULATED FROM STATIC GPS OBSERVATIONS AT THE WITNESS CORNERS FOR THE S 1/16 CORNER OF SECTION 20-21 AND THE SW 1/16 CORNER OF SECTION 21.

100 0 100

ORIGINAL SCALE: 1"=100'

PROJECT: TVM-17-01 CHERRY TREE ESTATES
FILE: TEP- EAST DWG

CHECKED: AMB DRAWN: RJE DATE: 5/24/19

bps BAILEY PROFESSIONAL SOLUTIONS

BAILEY PROFESSIONAL SOLUTIONS, LLC
5737 SOUTH KENTON STREET
ENGLEWOOD, CO 80111
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/12/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Tru Insurance Service LLC 8500 College Blvd Overland Park KS 66210		CONTACT NAME: Georgia Williams PHONE (A/C, No, Ext): (913) 385-5000 E-MAIL ADDRESS: georgia@tru-ins.com		FAX (A/C, No): (913) 385-3500	
INSURED Chadmor Estates LLC dba Cherry Tree Estates PO Box 1222 Arvada CO 80001-1222		INSURER(S) AFFORDING COVERAGE INSURER A : AUTO-OWNERS INSURANCE COMPANY INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :			NAIC # 18988

COVERAGES **CERTIFICATE NUMBER:** CL1991215878 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			75133123	08/27/2019	08/27/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						\$ \$ \$ \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes describe under DESCRIPTION OF OPERATIONS below						Y/N N/A PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER City and County of Denver Aten: Division of Real Estate 201 W Colfax Ave 10th Floor Denver CO 80202	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>[Signature]</i>
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