

After recording, return to:  
Division of Real Estate  
City and County of Denver  
201 West Colfax Avenue, Dept. 1010  
Denver, Colorado 80202  
**Project Description: 45<sup>th</sup> & Tower Road License**  
**Asset Mgmt No.: 20-130**

## LICENSE AGREEMENT AND COVENANT

**THIS LICENSE AGREEMENT AND COVENANT (“License Agreement”)** is entered into effective as of the date set forth below on the signature page for the City and County of Denver (“**Effective Date**”), by and between **CP BEDROCK, LLC**, a Delaware limited liability company (“**Licensee**”) and the **CITY AND COUNTY OF DENVER**, a Colorado home rule city and municipal corporation (“**Denver**”) whose address is 1437 Bannock Street, Room 350, Denver, Colorado 80202 (jointly referred to as the “**Parties**”).

### Recitals

A. Licensee is the owner/developer of a parcel of property legally described on Exhibit A to that certain Special Warranty Deed recorded with the City and County of Denver Clerk and Recorder’s office on January 28, 1998, at reception number 9800013248 (the “**Licensee’s Property**”).

B. Licensee’s Property abuts Tract A-2, in the subdivision CP Bedrock Filing No. 1, recorded with City and County of Denver Clerk and Recorder’s office on August 15, 2008, at reception number 2008113595, which is owned by Denver (the “**Denver Property**”).

C. The Denver Property separates Licensee’s Property from both 45<sup>th</sup> Avenue and Tower Road, both Denver owned and operated streets.

D. Licensee wishes to have access from both 45<sup>th</sup> Avenue and Tower Road to the Licensee’s Property across the Denver Property.

E. Denver is willing to allow Licensee to have access to the Licensee’s Property from 45<sup>th</sup> Avenue and Tower Road using the property legally described and depicted on the drawings in **Exhibit A** to this License Agreement (the “**Access Way**”).

F. In return for allowing Licensee to use the Access Way, Licensee agrees on Licensee’s own behalf and Licensee’s heirs, successors and assigns to abide by the covenants, promises, terms and conditions set forth in this License Agreement.

**NOW THEREFORE**, in consideration of the Recitals set out above and the license, covenants, promises, terms, and conditions set forth below, the Parties agree as follows:

1. **LICENSE.** Denver hereby grants a revocable, non-exclusive license to Licensee to construct, operate and maintain the Access Way as depicted and described in the attachment to this License Agreement solely for the purpose of providing access to and from Licensee's Property through the Denver Property and connecting to 45<sup>th</sup> Avenue and Tower Road, subject to the terms, conditions, promises, and covenants of this License Agreement (the "**License**"). Notwithstanding any provision to the contrary, no property title, rights or interests, including leases or easements, are granted hereby.

2. **RESTRICTED USE.** Licensee agrees and covenants that, other than as necessary to provide emergency access, no action will be taken by Licensee to acknowledge or extend any access rights under this License Agreement for the benefit or use of any property other than Licensee's Property or any persons other than the owners and tenants of Licensee's Property. Licensee also agrees and covenants that the Access Way: a) shall be as depicted in **Exhibit B** to this License Agreement; b) shall not be expanded or relocated and shall not be materially modified as to paving or construction without the written permission of Denver; c) shall not in any way negatively impact, harm, or impede Denver's use of the Denver Property and the Access Way, including, but not limited to, use for wetland channel purposes; and d) shall only be used to provide vehicular, pedestrian, and utility access for common and customary activities associated with commercial uses occurring on Licensee's Property, including the construction, maintenance, and repair of related improvements thereon, as allowed under the City and County of Denver zoning and building laws. In addition, Licensee agrees and covenants, as a condition of the License granted herein, that Licensee will not cause, permit or suffer any other encroachments or encumbrances on any portion of the adjoining Denver Property through either unauthorized uses of the Access Way or any use of Licensee's Property that adversely impacts the Denver Property beyond the use of the Access Way as permitted in this License Agreement.

3. **COMPENSATION.** In consideration of Denver granting the License rights to Licensee, prior to the Effective Date, Licensee shall pay Denver the sum of \$4,508.64 (\$10.10 per square foot).

4. **ACCESS LAWFUL.** Licensee represents and agrees that all permits, approvals, and other governmental authorizations required by law to be obtained for the construction, location, and operation of the Access Way have been obtained and are current and, if any others are required in the future, Licensee will diligently take all actions necessary to obtain such permits, approvals, or other governmental authorizations and to comply with the same and to make certain that the same are in compliance with this License Agreement. To the extent that there are any fees, charges, fines, penalties, or other costs or expenses associated with obtaining such permits, approvals, or other governmental authorizations or imposed for failure to obtain or comply with such permits, approvals, or other governmental authorizations, Licensee shall be solely responsible and liable for paying such.

5. **MAINTENANCE & REPAIR.** Licensee agrees and covenants to maintain and repair the Access Way, including any associated drainage, as necessary to assure that the Access Way is functional and safe for use by the public and to protect the Denver Property from erosion or other damage resulting from the use or operation of the Access Way. Prior to initiating any substantial maintenance or repair work on the ground on the Denver Property, Licensee agrees and

promises to obtain from the City and County of Denver the required permits or approvals allowing for such work to be performed on the Denver Property and to strictly comply with the terms and conditions of said permits or approvals. In case of an emergency, Licensee shall promptly notify the Denver Department of Transportation and Infrastructure-Wastewater Management Division of the emergency repairs made and obtain the required permits or approvals for the work and any further work. Should Licensee fail to perform any necessary maintenance or repair to the Access Way within the timeframe prescribed in any notice sent by Denver, Denver shall have the right to perform the necessary maintenance or repair and to seek recovery of damages, costs, expenses, and attorney's fees from Licensee by whatever means available under law, including but not limited to the filing and foreclosure of liens against Licensee's Property.

6. **TERM & EFFECT.** The License granted herein shall commence as of the Effective Date of this License Agreement and shall be in effect until revoked as provided herein. The covenants and promises made herein shall commence as of the Effective Date and shall remain in effect and run with the land (Licensee's Property) as long as the License is in effect and, even upon revocation of the License, until all covenants and promises are fully and faithfully performed, to the reasonable satisfaction of Denver and in accordance with this License Agreement.

7. **REVOCAION OR OTHER TERMINATION.** Denver has the right to revoke this License for a material violation of the terms, conditions, promises, and covenants of this License Agreement, provided Licensee has not cured the violation within the reasonable timeframe specified in a written notice from Denver, or upon closure of the Access Way resulting from any lawful order, directive, or edict issued by any governmental entity or court. Upon revocation by Denver or upon receipt of any lawful order, directive, or edict to close the Access Way, Licensee shall be solely responsible and liable for complying with said notification of revocation or said order, directive, or edict and restoring, at Licensee's sole cost, the Denver Property to a natural condition acceptable to Denver. Notice of violation and notice of revocation shall be in writing signed by the Executive Director of the Department of Transportation and Infrastructure or an authorized representative (the "**Director**").

8. **DAMAGE.** In the event that the Access Way is substantially damaged due to natural or man-made causes, the Access Way may be re-constructed upon submittal of complete and detailed construction plans to the Director and the Director's approval of said plans and issuance of such permits and approvals as may be required for the work on Denver property.

9. **DAMAGE TO DENVER PROPERTY.** Licensee agrees and promises that any real or personal property of Denver damaged or destroyed incident to the exercise of this License or upon revocation of this License and removal of the Access Way shall be promptly repaired or replaced by Licensee to the satisfaction of the Director, or in lieu of such repair or replacement, Licensee agrees and promises, if so required by the Director and at the Director's option, and after reasonable written notification, to pay Denver money in an amount sufficient to compensate for the loss sustained or costs incurred by Denver for any damage that may result from any location, construction, repair, maintenance, operation, or removal of the Access Way. For failure or refusal by Licensee to substantially comply with this paragraph, Denver shall have the right to seek recovery of damages, costs, expenses, and reasonable attorney's fees from Licensee by whatever

means available under law, including but not limited to the filing and foreclosure of liens against Licensee's Property.

10. **INDEMNIFICATION & GOVERNMENTAL IMMUNITY.** Licensee hereby releases and indemnifies and saves harmless Denver, its officers, agents, and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of Denver, and shall defend, indemnify, and save harmless Denver, its officers, agents, and employees from any and all claims, damages, suits, costs, expenses, liability, actions, penalties, or proceedings of any kind or nature whatsoever, including without limitations worker's compensation claims, of or by anyone whomsoever, which with respect to any of the foregoing in any way results, from, or arises out of, directly or indirectly, the use, occupancy, or operation of any portion of the Access Way or performance of any work and other activities specified or allowed under this License Agreement, and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors and agents of Licensee; provided, that Licensee need not release, indemnify or save harmless Denver, its officers, agents, and employees from damages resulting from the sole negligence of the Denver's officers, agents, and employees. The scope of this indemnification is not limited to third party claims. Any minimum insurance policies held by Licensee shall not be deemed to limit or define the obligations of Licensee under this License Agreement. It is expressly understood and agreed that Denver is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

11. **CONVEYANCE, TRANSFER, OR ASSIGNMENT.** Licensee acknowledges and covenants that, should Licensee convey, transfer, or assign any right, title, or interest, in whole or part, to Licensee's Property to another person or entity in the future for the purpose, among other things, of using, occupying, maintaining or operating Licensee's Property, Licensee shall include the unqualified and unlimited obligation of said person or entity to comply with and perform the duties and responsibilities of this License Agreement. All references to "Licensee" in this License Agreement shall thereafter be read to mean any person or entity receiving or holding any right, title, or interest in Licensee's Property.

12. **NOTICES.** All notices required to be given by or to the Parties herein shall be in writing and sent by certified mail, return receipt requested, to:

Licensee: CP Bedrock LLC  
610 West 26<sup>th</sup> Street, Suite 910  
New York, NY 10001  
Attn: Christopher S. Flagg, Vice President

Denver: Mayor  
City and County of Denver  
1437 Bannock Street, Room 350  
Denver, CO 80202

Executive Director  
Department of Transportation & Infrastructure  
City and County of Denver  
201 West Colfax, Dept. 608  
Denver, CO 80202

Denver City Attorney  
City and County of Denver  
1437 Bannock Street, Room 353  
Denver, Colorado 80202

Any party hereto may designate in writing from time to time the address of substitute or additional persons to receive such notices or address updates. The effective date of service of any such notice is mailed.

13. **COMPLIANCE WITH LAWS.** The Parties shall observe and comply with the applicable provisions of the Denver Charter, ordinances, and rules and regulations of Denver and with all applicable Colorado and federal laws.

14. **APPLICABLE LAW; VENUE.** The License Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado and the United States of America. Venue for any legal action relating to this License Agreement and Covenant shall lie solely in the District Court in and for the City and County of Denver.

15. **AMENDMENT.** This License Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein. Any representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties in the same formality as this License Agreement and Covenant.

16. **SEVERABILITY.** The promises and covenants contained herein are several in nature. Should any one or more of the promises or covenants be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining promises or covenants. However, if the License should be deemed invalid or unenforceable, the License Agreement shall terminate subject to the terms set forth in paragraph 5 above.

17. **NONDISCRIMINATION.** In connection with this License Agreement, Licensee 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 further agree to insert the foregoing provision in all contracts and subcontracts hereunder.

18. **THIRD PARTY CONTRACTS.** Licensee has no authority to bind Denver on any contractual matters. Denver shall have no liability or financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which Licensee contracts or has a contractual arrangement with respect to any work on or associated with the Access Way or with respect to any other aspects of the Access Way or its use.

19. **COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS.** Licensee shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the use of the Access Way. Licensee, in conducting activity or work of any kind on the Access Way, shall comply with all applicable local, state, and federal environmental rules, regulations, statutes, laws or orders (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use 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-containing soils and asbestos-containing materials, polychlorinated biphenyls (PCBs), special wastes, any petroleum products, natural gas, radioactive source material, pesticides and 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 rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

20. **RECORDING; RUNS WITH THE LAND.** This License Agreement shall be recorded in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado, and shall be a covenant that runs with Licensee’s Property and shall be binding upon Licensee and Licensee’s heirs, successors in interests and assignees and shall be enforceable by and inure to the benefit of Denver.

21. **NO PERSONAL LIABILITY.** No elected official, director, officer, agent, or employee of Denver shall be charged personally or held contractually liable by or to Licensee under any term or provision of this License Agreement or because of any breach or violation thereof or because of the execution, approval, or attempted execution of this License Agreement.

22. **EXECUTION.** This License Agreement shall not be or become effective or binding on Denver until it has been fully executed by all signatories of the City and County of Denver.

23. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Licensee consents to the use of electronic signatures by Denver. The License Agreement, and any other documents requiring a signature hereunder, may be signed electronically by Denver in the manner specified by Denver. The Parties agree not to deny the legal effect or enforceability of the License

Agreement 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 the License Agreement 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.

**[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.  
SIGNATURES BEGIN ON NEXT PAGE.]**

**Contract Control Number:** FINAN-202054031-[[00]]  
**Contractor Name:** CP BEDROCK 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:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

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

\_\_\_\_\_  
Manager of Finance

By:

\_\_\_\_\_  
Auditor

**Contract Control Number:**  
**Contractor Name:**

FINAN-202054031-[[00]]  
CP BEDROCK LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

LICENSEE:

CP BEDROCK, LLC,  
a Delaware limited liability company

By: Christopher S. Flagg  
Name: CHRISTOPHER S. FLAGG  
Title: VICE PRESIDENT

STATE OF New York )  
 ) ss.  
COUNTY OF New York )

The foregoing instrument was acknowledged before me this 25 day of Aug, 2020,  
by Christopher Flagg as Manager of CP Bedrock, LLC, a Delaware limited liability  
company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

Melissa Santiago  
Notary Public, State of New York  
No. 01526220456  
Qualified in New York County  
Commission Expires on  
April 12, 2022

Melissa Santiago  
Notary Public

## **EXHIBIT A**

### **EASEMENT "A"**

AN EASEMENT SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 21 WHENCE THE NORTHEAST CORNER OF SAID SECTION 21 BEARS NORTH 00°00'12" WEST AS SHOWN ON THE RECORDED PLAT OF C.P. BEDROCK FILING NO. 2 RECORDED AT RECEPTION NO. 2008126679, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS SURVEY;

THENCE NORTH 08°03'03" WEST A DISTANCE OF 642.88 FEET TO A POINT ON THE NORTH LINE OF TRACT A-2, C.P. BEDROCK FILING NO. 1, AS RECORDED AT RECEPTION NO. 2008113595;

THENCE ALONG THE NORTH LINE OF SAID TRACT A-2, SOUTH 89°59'48" WEST, A DISTANCE OF 69.33 FEET, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE DEPARTING SAID NORTH LINE OF TRACT A-2, SOUTH 00° 00' 12" EAST, A DISTANCE OF 16.00 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT A-2;

THENCE ALONG THE SOUTH LINE OF SAID TRACT A-2, SOUTH 89°59'48" WEST, A DISTANCE OF 7.00 FEET;

THENCE DEPARTING SAID SOUTH LINE OF TRACT A-2, NORTH 53°35'53" WEST, A DISTANCE OF 26.96 FEET TO A POINT ON THE NORTH LINE OF SAID TRACT A-2;

THENCE NORTH 89°59'48" EAST, A DISTANCE OF 28.70 FEET TO THE POINT OF BEGINNING;

CONTAINING 286 SQUARE FEET MORE OR LESS.

### **EASEMENT "B"**

AN EASEMENT SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 21, TOWNSHIP 3 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 21 WHENCE THE NORTHEAST CORNER OF SAID SECTION 21 BEARS NORTH 00°00'12" WEST AS SHOWN ON THE RECORDED PLAT OF C.P. BEDROCK FILING NO. 2 RECORDED AT RECEPTION NO. 2008126679, SAID LINE FORMING THE BASIS OF BEARINGS FOR THIS SURVEY;

THENCE NORTH 08°03'03" WEST A DISTANCE OF 642.88 FEET TO A POINT ON THE NORTH LINE OF TRACT A-2, C.P. BEDROCK FILING NO. 1, AS RECORDED AT RECEPTION NO. 2008113595;

THENCE ALONG THE WEST LINE OF SAID TRACT A-2, NORTH 00°00'12" WEST, A DISTANCE OF 19.02 FEET, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE OF TRACT A-2, NORTH 00° 00' 12" WEST, A DISTANCE OF 7.00 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°55'59" EAST, A DISTANCE OF 30.00 FEET TO A POINT ON THE EAST LINE OF SAID TRACT A-2;

THENCE ALONG SAID EAST LINE, SOUTH 00°00'12" EAST, A DISTANCE OF 7.00 FEET;

THENCE DEPARTING SAID EAST LINE, SOUTH 89°55'59" WEST, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING;

CONTAINING 210 SQUARE FEET MORE OR LESS.



RY P. RUSK, PLS 38226  
FOR AND ON BEHALF OF FORESIGHT WEST SURVEYING INC.  
1285 W. BYERS PL., UNIT A  
DENVER, CO 80223  
303.901.0479

