After recording, return to: Division of Real Estate City and County of Denver 201 West Colfax Avenue, Dept. 1010 Denver, Colorado 80202

**Project Description: Utility License for Cherry Tree Estates** 

Asset Mgmt No.: 21-168

### 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 CHERRY TREE ESTATES, LLC, a Colorado limited liability company ("Licensee") who owns the property at 7510 E. Montana Place formerly referred to as 1700 South Quebec Street, in the County of Arapahoe, State of Colorado, and the CITY AND COUNTY OF DENVER, a Colorado 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 of a parcel of property located at 7510 E. Montana Place formerly referred to as 1700 South Quebec Street, in the County of Arapahoe, State of Colorado, legally described as set forth in **Exhibit A** (the "**Licensee's Property**").
- B. Access to Licensee's Property has been available by an Easement granted for access dated November 4, 2019 and recorded with Denver Clerk and Recorder at number 2019158497 as depicted on the drawing and legally described in **Exhibit B** to this License Agreement (the "Access **Way**"), has been the sole means of access for the Licensee's Property to and from public roads.
- C. Licensee has requested and Denver is willing to grant, a revocable, non-exclusive license for the installation of certain utilities within the Access Way.

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. <u>LICENSE</u>. In consideration of the fee to by paid by Licensee set forth below and in further consideration of the covenants and agreements to be performed by Licensee, Denver hereby grants a revocable, non-exclusive license ("License") to Licensee for the installation, and thereafter, until this License is revoked pursuant to the terms contained herein, maintenance and operation of underground utilities; specifically limited to water, electrical, gas, communications (including fiber and cable), and storm water utilities ("Licensee Facilities") within the Access Way to serve Licensee's Property. Notwithstanding any provision to the contrary, no property title, rights or interests, including leases or easements, are granted hereby.
- 2. **FEE.** In consideration of the City granting the license to Licensee, Grantee shall pay the City the sum of ten dollars and 00/100 (\$10.00).

- 3. **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; and c) shall only be used to provide Licensee Facilities for common and customary activities associated with residential uses currently occurring on Licensee's Property, including the construction, maintenance, and repair of related improvements thereon, as allowed under Arapahoe County zoning and building laws.
- 4. PLANS. Prior to installing any of the Licensee Facilities, Licensee shall submit the construction plans for such Licensee Facility(ies) ("Plans") to Denver's Department of Transportation and Infrastructure Wastewater (specifically to the attention of Danny Harris, Danny.Harris@denvergov.org and wmdcustomerserive@denvergov.org) for review and approval. No changes in the Plans shall be made unless Denver has consented to such changes in writing. Denver's review and approval of the Plans in no way relieves the Licensee or its contractors or agents from their responsibilities, obligations and/or liabilities under this License Agreement, and will be approved with the understanding that Denver makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Licensee or its contractors or its agents on the Plans is at the risk of the Grantee and such contractors or agents.
- 5. <u>LICENSEE FACILITIES LAWFUL</u>. 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 Licensee Facilities 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.

### 6. **SURFACE RESTORATION.**

- 6.1 After installation of the Licensee Facilities, the general surface of the ground shall be restored, as nearly as reasonable, to the grade and condition existing immediately prior to construction.
- 6.2 If the Licensee disturbs the general surface in connection with its use of the Access Way after installation of the Licensee Facilities, the Licensee shall restore the general surface of the ground, to the grade and condition existing immediately prior to its disturbance of the surface.

- 7. **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.
- 8. **REVOCATION 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 (other than Denver) 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, Denver's property. Notice of violation and notice of revocation shall be in writing.
- 9. **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.
- 10. <u>CONVEYANCE, TRANSFER, OR ASSIGNMENT</u>. 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.

11. **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: Cherry Tree Estates, LLC

PO Box 1352 Arvada, CO 80001 Attn: Tim VanMeter

Denver: Mayor

City and County of Denver 1437 Bannock Street, Room 350

Denver, CO 80202

Director of Real Estate City and County of Denver 201 West Colfax, Dept. 1010

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.

- 12. <u>COMPLIANCE WITH LAWS</u>. 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.
- 13. <u>APPLICABLE LAW; VENUE</u>. 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.
- 14. <u>AMENDMENT</u>. 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.

- 15. **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.
- 16. **NONDISCRIMINATION**. In connection with the performance of work under the License Agreement, the Licensee may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Licensee shall insert the foregoing provision in all subcontracts.
- 17. **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.
- **COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS.** Licensee 18. 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.
- 19. **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.
- 20. **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.

- 21. **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.
- 22. <u>ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS</u>. 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.
- 23. **EXAMINATION OF RECORDS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Easement. Grantee shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Easement or expiration of the applicable statute of limitations. When conducting an audit of this Easement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Grantee to make disclosures in violation of state or federal privacy laws. Grantee shall at all times comply with D.R.M.C. 20-276.

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

their hands and affixed their seals at
CITY AND COUNTY OF DENVER:
By:
-
REGISTERED AND COUNTERSIGNED:
By:
-

By:

FINAN-202160545-00

Cherry Tree Estates, LLC

**Contract Control Number:** 

**Contractor Name:** 

Contract Control Number: Contractor Name:

FINAN-202160545-00 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)

Contract Control Number: Contractor Name: FINAN-202160545-00 Cherry Tree Estates, LLC

De Martin de s
Name: Jindly RVAN Weter
(please print) /
Title: MAN. MEUN BEN (please print)
ATTEST: [if required]
By: Kathleer M. Von Melus
Name: KAM (OEW M. Van Motor (please print)
Title: (please print)

## EXHIBIT A

# LEGAL DESCRIPTION OF REAL PROPERTY

LOT 1, BLOCK 1, CHERRY TREE ESTATES FILING NO. 1, COUNTY OF ARAPAHOE, STATE OF COLORADO.

1700 S Quebec Street, Denver, CO 80231.

## 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 153.56 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.

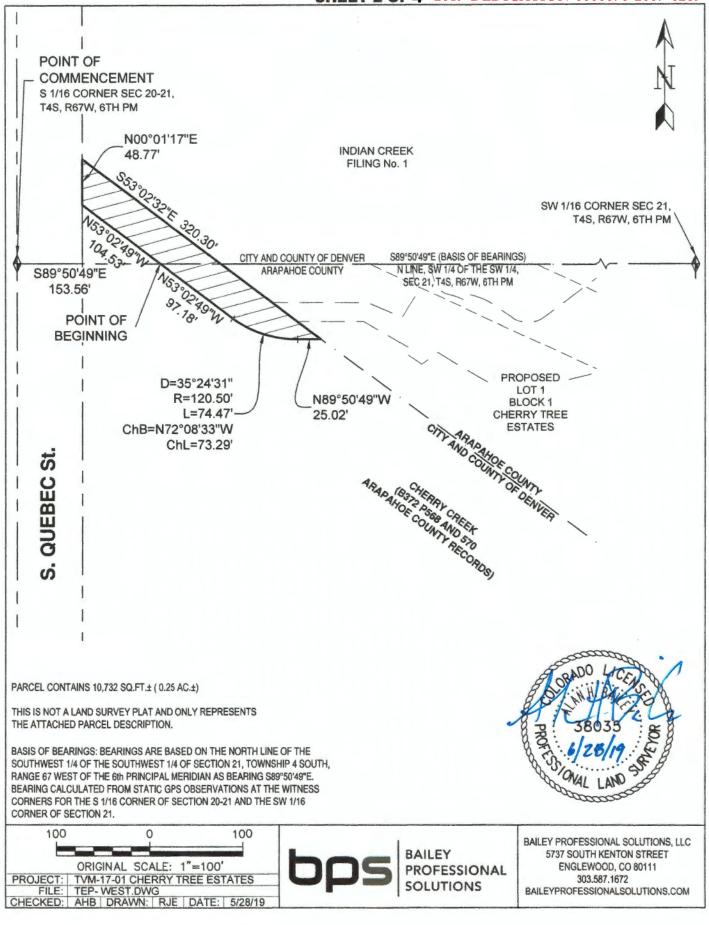
PREPARED BY: ALAN H. BAILEY PLS No. 38035 ON BEHALF OF: BAILEY PROFESSIONAL SOLUTIONS, LLC 5737 SOUTH KENTON STREET ENGLEWOOD, CO 80111 303.587.1672



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CHECKED:	AHB	DRAWN:	RJE	DATE:	5/28/19





### 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 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 53°02'32" EAST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 1,327,15 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 87.97 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.

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

CHECKED: AHB DRAWN: RJE DATE: 5/28/19



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

