

## **PUBLIC RIGHT OF WAY LANDSCAPE LICENSE AGREEMENT**

THIS PUBLIC RIGHT-OF-WAY LANDSCAPE LICENSE AGREEMENT ("Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2019, between EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY COLORADO, whose street address is 200 S. Cascade Ave., Suite 100, Colorado Springs, CO 80903, Colorado Springs, CO 80903 (hereinafter "Licensor"), and Lorson Ranch Metropolitan District, whose mailing address is 212 N. Wahsatch Ave., Suite 301, Colorado Springs, CO 80903 (hereinafter "Licensee"). The Licensor and the Licensee may be collectively referred to herein as the "Parties" or singularly as "Party."

### **RECITAL:**

WHEREAS, Licensee owns real property located in El Paso County, Colorado in Creekside at Lorson Ranch Filing No. 1 (the "Subdivision") specifically, all Subdivision Tracts ("Property"); and

WHEREAS, Licensor owns that certain right-of-way adjacent to the Property, as depicted in Exhibit A,

WHEREAS, Licensee desires to use the Licensor's right-of-way for the following purposes that include, but are not limited to: landscaping, irrigation, mailbox kiosks, and potential fencing, including maintenance and repair, within the Licensor's right-of-way; and

WHEREAS, the Licensee is required to obtain all necessary permits and pay any permit fees prior to performing any work in the Licensor's right-of-way; and

WHEREAS, the Licensor, as a convenience to the Licensee, consents to allow the Licensee to use a portion of its right-of-way for the purposes of landscaping, irrigation, mailbox kiosks, and potential fencing, including maintenance and repair (hereinafter the "Improvements").

### **Agreement**

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals:** The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.

2. **Description and Use of the Licensed Premises:** The Licensor hereby grants to Licensee a license for ingress and egress and the Improvements upon portions of the Licensor-owned right-of-way (the "License"), all within the Subdivision. The relevant part of said right-of-way and the location thereof is generally illustrated in Exhibit A, attached hereto, which

cross-hatched area depicted on Exhibit A shall be hereinafter referred to as the "Licensed Premises." The License is granted to Licensee to construct, install, maintain and repair the Improvements within the Licensed Premises. As this Agreement only creates a license, each Party's rights and obligations stated hereunder are exclusively contractual. Thus, each Party agrees and understands that this Agreement does not create any type of real estate interest of any kind or nature or any type of possessory estate or possessory interest in the Licensed Premises. The entire Licensed Premises shall be for the use of Licensee, its employees, agents, servants and invitees for any lawful purposes associated with the Improvements, and related purposes for the benefit of the Licensee and the Property.

3. Term and Commencement of Use: The License shall commence on the date first written above, hereinafter referred to as the Commencement Date, and it shall continue until the Licenser requires the Licensed Premises for other public purposes, or unless sooner terminated in whole or in part by the Licenser as more fully set forth in Paragraph 4 below.

4. Termination by Licenser for Valid Public Purpose: The Licenser shall be entitled to terminate the License on all or part of the Licensed Premises for any valid public purpose, upon 30 days written notice to the Licensee. Upon the Licenser's exercise of its right to terminate, the Licensee shall not be entitled to the payment of any compensation or just compensation under any cause of action at law or in equity for the retaking of the Licensed Premises or removal or relocation of the Improvements after the 30-day notice period. Licenser and the Licensee shall retain their respective rights and obligations under this Agreement only with respect to any part of the Licensed Premises not so utilized by the Licenser for a valid public purpose. The Licensee shall remove or relocate all of the Improvements in the area where the License is being terminated within the 30-day notice period at its own expense. The Licensee shall not have any further rights or obligations with respect to any part of the Licensed Premises utilized by the Licenser for a valid public purpose.

5. Condition of the Licensed Premises, Obligation to Make Repairs, Obligation to Remain in Compliance with Laws: The Licensee agrees and understands that it commences its use of the Licensed Premises "AS IS" and without any warranties of any kind or nature, including without any warranties as to the state of the Licenser's title to the Licensed Premises. It shall be the Licensee's sole obligation to maintain and make any necessary repairs to the Licensed Premises, and to maintain and repair the Licensed Premises and Improvements thereon in full compliance with the requirements of the Public Works Department, or as otherwise required by the El Paso County Land Development Code, as amended, revised, or replaced, and any and all other applicable state, federal, or local laws, regulations, and ordinances. Upon termination of the License for any reason, the Licensee shall return the Licensed Premises to substantially the same condition as existed immediately prior to the Commencement Date, ordinary wear and tear excepted. The Licensee shall be responsible for any costs associated with moving the Improvements, if required in the future.

6. Indemnification/Hold Harmless. To the extent allowed by law, the Licensee shall indemnify and hold the Licenser and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Licensee's, its contractors', agents', or employees' failure to comply with the

terms of this Agreement or failure to maintain the Licensed Premises in a safe condition or for use of the Licensed Premises, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Licensee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit the defense available to either the Licensor or Licensee pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

7. Assignment: Licensee shall not assign or otherwise transfer this License or Agreement or any right or obligation hereunder without the prior written consent of the Licensor. Should the Licensor agree to such assignment, Licensor and Licensee hereby expressly agree that the intent of such benefit to said successors in title is not to create an easement in the Licensed Premises, but rather, a License. Licensor and Licensee, both for themselves and for their successors in title, agree that this License is terminable at the will of the Licensor, upon 30 days prior written notice, as set forth in Paragraph 4 above.

8. Construction. The rule of strict construction does not apply to this instrument. This License shall be given a reasonable construction in light of the intention of the Licensor to confer on Licensee a usable right to construct, maintain, repair, and replace the Improvements described herein.

9. Right to Inspect: Licensee shall permit the Licensor to enter upon the Licensed Premises at reasonable times and without notice to inspect the condition of the Licensed Premises.

10. Remedies: The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity.

11. Entire Agreement: This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

12. Binding: The Licensee and Licensor hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Licensor and the Licensee in the event the Licensor agrees to an assignment of the Agreement.

13. Authority. The undersigned hereby acknowledge and represent that they have legal authority to bind their respective Party to this Agreement.

14. Applicable Law. The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement. The Parties understand and agree that, in the event of any litigation that may arise under this Agreement, jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.

15. Execution. This Agreement, including facsimile copies of this Agreement, may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event facsimile copies of this Agreement are executed, the original signatures shall be compiled and attached to form the original Agreement.

16. Recording. This Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

IN WITNESS WHEREOF, the Parties have executed this License effective as of the day and year first written above.

**LICENSOR:**  
BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By: \_\_\_\_\_  
Mark Waller, Chair

ATTEST:

By: \_\_\_\_\_  
Chuck Broerman  
County Clerk and Recorder

STATE OF COLORADO     )  
                                      )     S.S.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Darryl Glenn, President of the Board of County Commissioners of the County of El Paso, State of Colorado, and as attested to by Chuck Broerman, County Clerk and Recorder.

WITNESS my hand and official seal.

My Commission Expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM:

OFFICE OF THE COUNTY ATTORNEY  
OF EL PASO COUNTY, COLORADO

By: \_\_\_\_\_  
Assistant County Attorney

**LICENSEE:**

\_\_\_\_\_  
Lorson Ranch Metropolitan District

By: \_\_\_\_\_  
Jeff Mark, President

ATTEST:

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

STATE OF COLORADO     )  
                                      )     S.S.  
COUNTY OF EL PASO     )

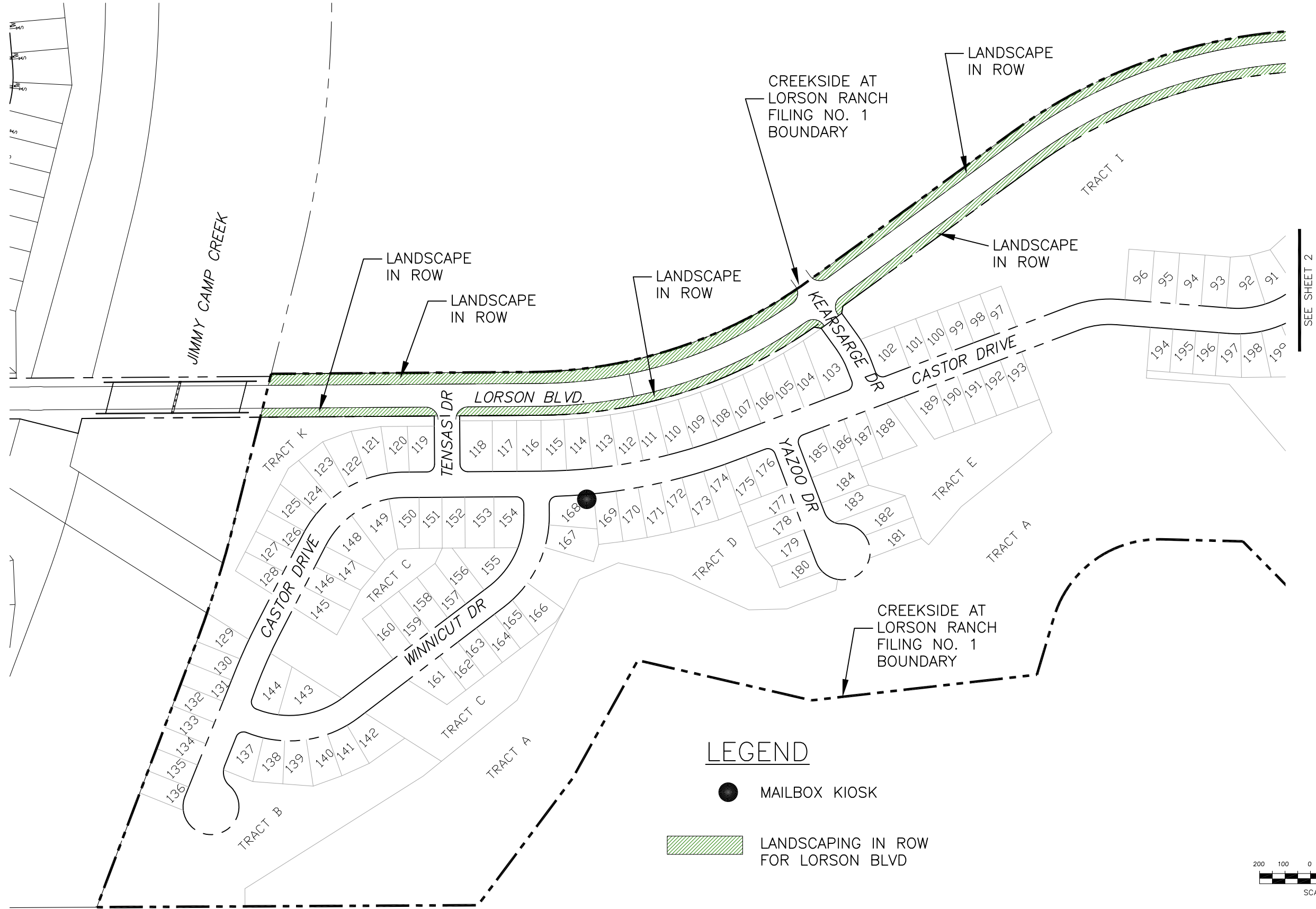
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Jeff Mark, as President of Lorson Ranch Metropolitan District.

WITNESS my hand and official seal.

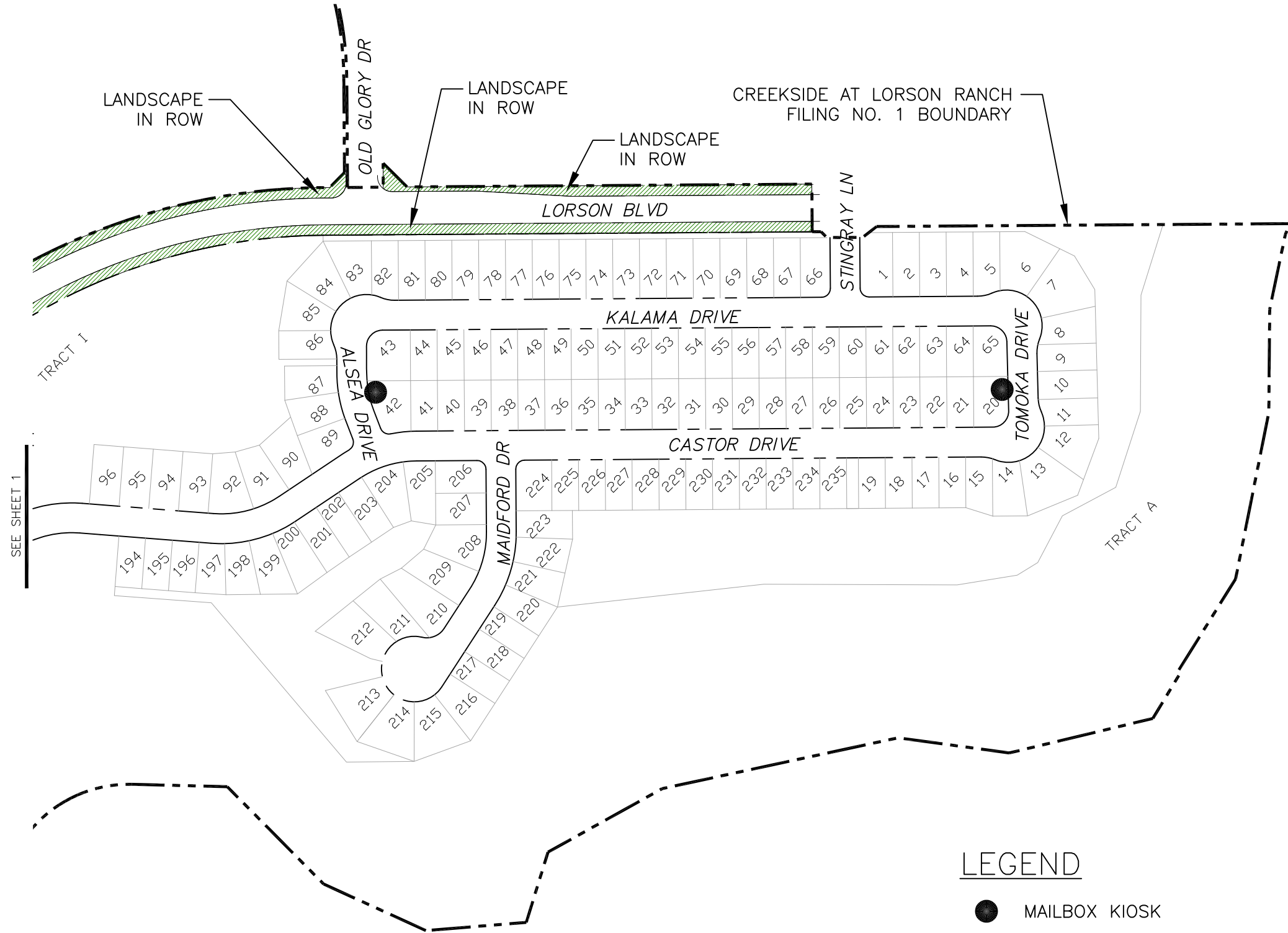
My Commission Expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Exhibit A:

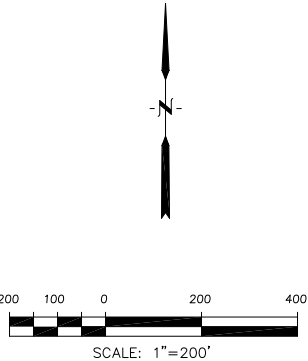


<b>CORE</b>	
<b>ENGINEERING GROUP</b>	
15004 1ST AVENUE S. DENVER, CO 80202 PHONE: 719.576.1100 CONTACT: RICHARD L. SCHINDLER, P.E. EMAIL: Rich@ceg1.com	
DATE	
DESCRIPTION	
NO.	
DRAWN: RLS DESIGNED: RLS CHECKED: RLS	
PROJECT: CREEKSIDE AT LORSON RANCH FIL NO. 1 LORSON BLVD, KEARSARGE DR COLORADO SPRINGS, COLORADO	
PREPARED FOR: LORSON, LLC 212 N. WAHSATCH AVE, SUITE 301 COLORADO SPRINGS, COLORADO 80903 (719) 635-3200 CONTACT: JEFF MARK	
CREEKSIDE AT LORSON RANCH FIL NO. 1 EXHIBIT A - LANDSCAPE LICENSE	
DATE: JULY, 2019	
PROJECT NO. 100.045	
SHEET NUMBER 1	
TOTAL SHEETS: 2	



LEGEND

-  LANDSCAPING IN ROW FOR LORSON BLVD
-  MAILBOX KIOSK



<p><b>CORE</b></p> <p><b>ENGINEERING GROUP</b></p> <p>15004 1ST AVENUE S. DENVER, CO 80202 PHONE: 719.576.1100 CONTACT: RICHARD L. SCHINDLER, P.E. EMAIL: Rich@ceg1.com</p>		<p>DATE</p>
<p>NO.</p>		<p>DESCRIPTION</p>
<p>PROJECT:</p> <p>CREEKSIDE AT LORSON RANCH FIL NO. 1 LORSON BLVD, KALAMA DR COLORADO SPRINGS, COLORADO</p>		<p>PREPARED FOR:</p> <p>LORSON, LLC 212 N. WAHSATCH AVE, SUITE 301 COLORADO SPRINGS, COLORADO 80903 (719) 635-3200 CONTACT: JEFF MARK</p>
<p>DRAWN: RLS DESIGNED: RLS CHECKED: RLS</p>		<p>DATE:</p> <p>APRIL, 2019</p>
<p>PROJECT NO.</p> <p>100.045</p>		<p>SHEET NUMBER</p> <p>2</p>
<p>TOTAL SHEETS: 2</p>		<p>CREEKSIDE AT LORSON RANCH FIL NO. 1 EXHIBIT A - LANDSCAPE LICENSE</p>