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El Paso County, CO



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**LICENSE AGREEMENT**  
**FOR PRIVATE IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY**

**For RETREAT AT TIMBERRIDGE FILING NO. 1**

**Schedule No: 52280-00-019, 52270-00-003, 52270-00-004**  
**East of intersection of Vollmer Road and Poco Road**

This License Agreement ("Agreement") is entered into and made effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **Retreat Metropolitan District, quasi-municipal entity and political subdivision of the State of Colorado**, whose mailing address is 2138 Flying Horse Club Dr., Colorado Springs, CO 80921 (the "Licensee") and **EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO**, a political subdivision of the State of Colorado, whose street address is 200 S. Cascade Avenue, Suite 100, Colorado Springs, CO 80903 (the "County" or the "Licensor"). The Licensee and Licensor may also be referred to generally as a "Party" and collectively as the "Parties."

**Recitals**

**WHEREAS**, pursuant to Section 43-2-147(1)(a), Colorado Revised Statutes (C.R.S.), the County is authorized to regulate vehicular access to or from any public highway under its jurisdiction from or to property adjoining said public highway in order to protect the public health, safety, and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage, and to protect the functional level of public highways; and

**WHEREAS**, Licensee is the owner of certain real property located in El Paso County, Colorado, legally described as follows (the "Property"):

RETREAT AT TIMBERRIDGE FILING NO. 1; and

**WHEREAS**, the County owns and maintains the public rights-of-way known as Vollmer Road adjacent to the Property; and

**WHEREAS**, Licensee desires to obtain access from Vollmer Road to the Property and use the Licensor's right-of-way for the following purposes: installation of public roadway, street lights and mailbox kiosk improvements ("Improvements") and maintenance and repair of same 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 constructing, maintaining and repairing the Improvements.

**NOW, THEREFORE**, in consideration of the mutual benefits and covenants contained herein, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

### **Agreement**

1. **Incorporation.** The Parties incorporate the above recitals into this Agreement.
  
2. **Description and Use of the Licensed Premises.** Licensor hereby grants to Licensee a License upon those portions of the Licensor-owned rights-of-way known as Poco Road, Aspen Valley Road, Antelope Ravine Drive, Rabbit Tail Drive, Elk Antler Lane and Bison Valley Trail, generally illustrated in **Exhibit A**, attached hereto, which areas are depicted and labeled 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. Such maintenance and repair shall be done in accordance with applicable laws and County regulations and shall include snow removal within the Licensed Premises. As this Agreement only creates a License, each Parties' 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 construction, use, and maintenance of the Improvements, and related purposes for the benefit of the Licensee and the Property.
  
3. **Installation of Improvements.** All construction shall be performed in a good and workmanlike manner and in accordance with applicable County standards, rules, and regulations governing such construction, as determined by El Paso County Planning and Community Development and Department of Public Works.
  
4. **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 Licensor requires the Licensed Premises for other public purposes, or unless sooner terminated in whole or in part by the Licensor as more fully set forth in **Paragraph 6** below.
  
5. **Additional License Terms:**
  - **Utilities.** Licensee is responsible to ensure no damage occurs to existing utility and other installations that may be present on the right of way during installation, construction or repair of the Improvements. Licensor reserves the right to issue Work in the Right of Way permits allowing installation of utilities in the Licensor's public right of way. Licensee shall not interfere with these installations which will take precedence over any Improvements, now in place or installed in the future. If any utility installation damages all or any portion of the permitted Improvements within the Licensed Area, Licensor shall have no liability to Licensee for such damages.

- **Damage.** Licensee is responsible for reimbursing Licensor for the repair of any damage to fences, signs, delineators, guardrails, landscape plantings of the Licensor, or any other right of way improvements resulting from the Licensee's operations. Licensee shall hold Licensor, its elected officials, appointees, officers, and employees free and harmless from all risk of injury or damage to Licensee, property of Licensee, and Licensee's agents, employees, assigns and successors or others which may result from debris, foreign objects, or chemical contamination resulting from normal maintenance activities performed by Licensor. Licensee is responsible for reimbursing Licensor for the repair and re-survey of any damage and disturbance to any survey monuments resulting from activities within the Licensed Premises by the Licensee.
- **Licensor's Need for Right of Way.** Licensor will not replace or relocate any Improvements placed within the public right of way or the Licensed Premises if Licensor has to remove Improvements, in whole or in part, for any valid public purpose including, but not limited to: safety, maintenance, roadway improvement project, or construction. At the time Licensor's construction or maintenance operations begin, this License will be suspended. The License may be reinstated for the remaining term upon completion of the construction.
- **Work in the Right of Way Permit.** Prior to any construction, operation, and/or landscaping activities (as identified on the attached **Exhibit A** and the PUD Development Plan for Retreat at TimberRidge) within the Licensed Premises, Licensee shall obtain a Work in the Right of Way Permit from the El Paso County Department of Public Works in accordance with the El Paso County Engineering Criteria Manual.
- **Maintenance.** As the Improvements will be a part Licensor's public right of way, Licensee is expected to maintain the improvements in an acceptable manner. Upon notice of any deficiency in the Improvements, either: a) by Licensor; or b) by its own observation; or c) by any other means, the Licensee shall take action as soon as possible, but not later than fifteen (15) working days after the mailing date of written notice from Licensor to correct the deficiency and to protect the safety of the traveling public. In the event Licensee, for any reason, do not or cannot correct the deficiency within fifteen (15) working days of written notice as contemplated above, or demonstrate that action satisfactory to cure such default has been commenced and will be completed in a timely manner, or otherwise demonstrated that no deficiency exists, Licensor reserves the right to correct the deficiency and to bill the Licensee for such work. Licensee shall pay any such bill within thirty (30) days after receipt. Under these circumstances, Licensor shall only correct the deficiency to the extent it affects use of the right of way and/or the public's health, safety, and welfare.
- **Natural Disasters.** Licensor shall not be liable to Licensee in the event of an emergency, such as a fire, flood, or other natural cause which damages the Licensed Premises or the Improvements. In the event the Licensed Premises are damaged due to a natural disaster, it shall be the sole responsibility and cost of Licensee to return the Licensed Premises to its original condition.

6. Termination:

a. Termination by Licensor. Licensor at any time and 1) for any valid public purpose, as determined at Licensor's sole discretion, or 2) upon violation of any term of the License by Licensee, shall be entitled to terminate the License on all or part of the Licensed Premises by giving at least 30 days' prior written notice to Licensee. In addition, the El Paso County Engineer shall have the authority to immediately terminate the License on all or part of the Licensed Premises if he or she determines that the public health, safety or welfare is adversely affected by the License. Upon such termination, Licensor may direct Licensee to remove all or a portion of the Improvements from the Licensed Premises at Licensee's sole expense, and the Licensee shall restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

b. Termination by Licensee. Licensee at any time shall be entitled to terminate the License on all or part of the Licensed Premises by giving at least 30 days' prior written notice to Licensor. Upon termination by the Licensee of the License on all or part of the Licensed Premises, and if requested by Licensor, the Licensee shall remove the Improvements within the 30-day notice period at its own expense and restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

c. Effect of Termination. Upon termination of the License on all or part of the Licensed Premises by either Party, Licensee shall not be entitled to the payment of any compensation or just compensation under any cause of action at law or in equity, including but not limited to eminent domain, for the retaking of the Licensed Premises or removal or relocation of the Improvements. If the License is terminated on only a portion of the Licensed Premises, Licensor and Licensee shall retain their respective rights and obligations under this Agreement with respect to the remaining portions of the Licensed Premises, and Licensee shall not have any further rights or obligations with respect to any part of the Licensed Premises for which the License has been terminated.

7. Condition of the Licensed Premises, Obligation to Make Repairs, Obligation to Remain in Compliance with Laws. The Licensee agrees and understands that they commence use of the Licensed Premises in an "AS IS" condition and without any warranties of any kind or nature. 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 in full compliance with the requirements of the Department of Public Works, 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.

8. Indemnification/Hold Harmless. Licensee shall indemnify and hold the Licensor and its heirs, successors and/or assigns harmless from and against any and all damages, losses, costs,

expenses and liabilities of any kind or nature as a result of, or in connection with Licensee's, its contractors', agents', consultants' and/or employees' failure to comply with the terms of this Agreement or failure to maintain the Licensed Premises in a safe condition, and for use of the Licensed Premises, but only to the extent such damages, losses, costs, expenses, and liabilities are due to or arising from Licensee's negligence or willful misconduct, but not as to use by the general public. Nothing in this section shall be deemed to waive or otherwise limit the defense available to Licensor pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

9. **Compliance with Fire/Rescue Protection District Standards.** The Improvements are subject to all applicable standards of the local Fire / Rescue Protection District to enable the provision of fire protection and emergency response to the Property.

10. **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, which shall not be unreasonably withheld, conditioned or delayed. 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 as set forth in **Paragraph 6** above. Evidence of any such assignment or termination shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

11. **Construction.** This Agreement 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.

12. **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.

13. **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.

14. **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.

15. **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.

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

17. 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.

18. 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.

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

20. Amendment. Any amendment, termination, deletion, addition to, or modification of this Agreement must be agreed to in writing and acknowledged by all of the Parties to this Agreement. Additionally, any amendment, termination, deletion, addition to, or modification of this Agreement must be recorded in the records of El Paso County, Colorado.

21. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party, except for the Licensee's Contractors, Consultants, Employees, and Agents, the right to the performance of this Agreement, to claim any damages or to bring any legal action or other proceeding against the Licensee or Licensor.

22. Severability. If any paragraph, section, subsection, clause or phrase of this Agreement is for any reason held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.

23. Waiver. The waiver of a breach of any of the provisions of this agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

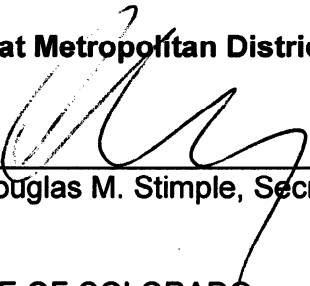
Done the day and year first written above.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

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**LICENSEE:**


**Retreat Metropolitan District**

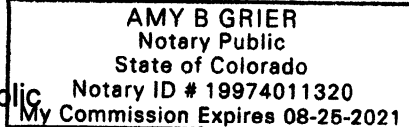
By:   
Douglas M. Stimple, Secretary

STATE OF COLORADO )  
 ) ss  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of December, 2020, by Douglas M. Stimple, as, Secretary, of the Retreat Metropolitan District.

Witness my hand and official seal.  
My commission expires: 8/25/2021



Notary Public   
AMY B GRIER  
Notary Public  
State of Colorado  
Notary ID # 19974011320  
My Commission Expires 08-25-2021

LICENSOR:

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By:   
Mark Waller, Chair

ATTEST:

\_\_\_\_\_  
Chuck Broerman  
County Clerk & Recorder

STATE OF COLORADO )  
                                  ) ss  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Mark Waller as Chair of the Board of County Commissioners of the County of El Paso, State of Colorado.

WITNESS my hand and official seal.

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

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

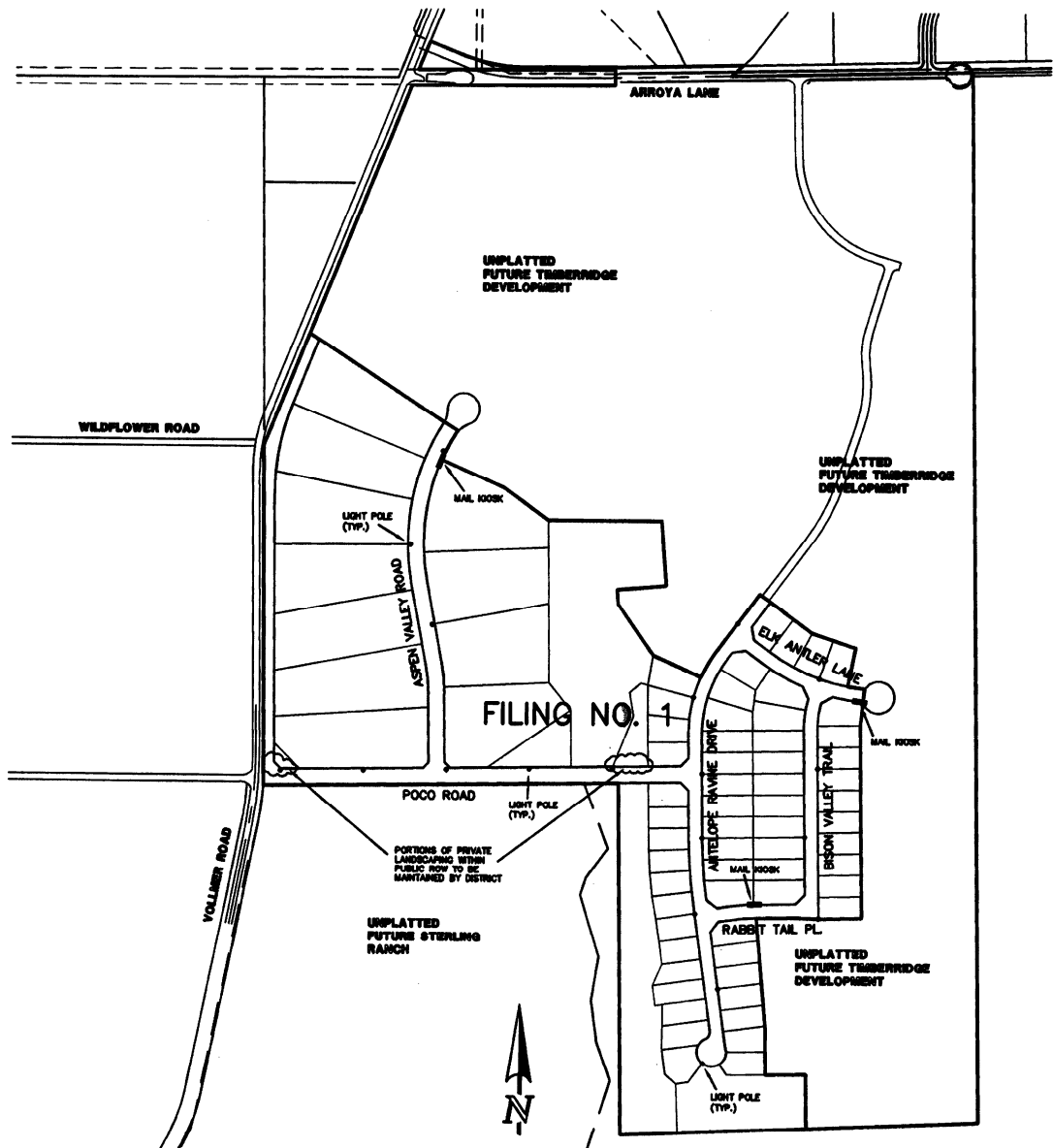
APPROVED AS TO FORM:

OFFICE OF THE COUNTY ATTORNEY  
OF EL PASO COUNTY, COLORADO

By:   
Assistant County Attorney



**Exhibit A**  
**the "Licensed Premises"**



**EXHIBIT A**  
NOT TO SCALE