



## PUBLIC RIGHT OF WAY LICENSE AGREEMENT

### GUNTZELMAN PORCELAIN PINES SUBDIVISION

THIS PUBLIC RIGHT-OF-WAY LICENSE AGREEMENT (“Agreement”), is made this 6th day of June, 20 24, between EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY COLORADO, whose street address is 200 South Cascade Avenue, Colorado Springs, CO 80903 (hereinafter “Licensor”), and Kristian and Christa Guntzelman, whose mailing address is 5381 Sugar Camp Road, Milford, OH 45150 (“Licensee”). The Licensor and Licensee may be singularly referred to herein as the Party or collectively referred to herein as the Parties.

#### RECITALS

WHEREAS, Licensee plans to develop on the Property legally described in Exhibit A, attached hereto and incorporate herein by reference, a subdivision to be known as Guntzelman Porcelain Pines, and

WHEREAS, Licensor owns certain right-of-way known as Kulsa Road adjacent to the Property; and

WHEREAS, Licensee wishes to install and maintain driveway improvements within the Kulsa Road right-of-way in order to comply with County access requirements; and

WHEREAS, Licensor, as a convenience to Licensee, consents to allow Licensee to use portions of the Kulsa Road right-of-way for the purposes of installation, maintenance, repair, and replacement of driveway improvements, such as but not limited to grading, gravel, asphalt millings, etc. (the “Improvements”); and

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

#### 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 Licensor’s Premises: Licensor hereby grants to Licensee a License for the installation, maintenance, repair, and replacement of the Improvements within portions of Licensor’s right-of-way known as Kulsa Road as shown by the shaded areas depicted on Exhibit A, attached hereto and incorporated herein by reference (the “Licensed Premises”). As this Agreement only created 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 a real property interest of any kind of nature, or any type of possessory estate or possessory interest in the Licensed Premises. The entire Licensed Premises shall be for the use of the Licensee, its employees, agents, servants, and invitees for

any lawful purposes associated with the maintenance and lawful use of the Improvements. The Improvements shall be owned by the Licensee.

Licensee understands and agrees that, as the Improvements will be located in public right-of-way, members of the public and adjacent property owners may access and use the Improvements. Licensee may not impede, interfere with, or request or require reimbursement or remuneration for such access and use.

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 Licensor requires the Licensed Premises for other public purposes, or unless sooner terminated in whole or in part by either Party as more fully set forth in Paragraph 5 below.

4. Additional License Terms:

a. 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 the installation, construction, maintenance 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 Premises, Licensor shall have no liability to Licensee for such damages.

b. Damage. Licensee is responsible for reimbursing Licensor for the repair of any damage to any right of way improvements resulting from 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 other 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 Licensee.

c. 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 reason including but not limited to safety, maintenance, 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.

d. Work in the Right of Way Permit. Prior to any major construction, operation, and/or landscaping activities 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. A new Work in the Right-of-Way Permit will be required whenever the previous Work in the Right-of-Way Permit has expired or for each new activity in the then current Work in the Right-of-Way Permit.

e. Provision of Utilities. If the Improvements are connected to any utilities, e.g. water or electricity, Licensee shall be responsible for complying with all rules and paying all rates and costs established by the utility providers.

f. Maintenance of Improvements. As the improvements will be a part of 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, 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, does 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 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.

g. Maintenance of Right of Way. As part of its normal maintenance, repair and snow removal operations, Licensor may drive across or work adjacent to the Licensed Premises. Though Licensor shall take reasonable care when doing so, Licensor shall not be responsible to Licensee for any damage to the Improvements that may occur in the course of maintenance, repair or snow removal operations. Licensor will not provide snow removal within the Licensed Premises. Some snow may be left in front of the Licenses Premises during normal snow removal activities.

h. 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 the Licensee to return the Licensed Premises and the Improvements, to their original condition.

5. 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 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 may terminate the License on all or part of the Licensed Premises only upon establishment of alternative legal access for all lots within the Guntzelman Porcelain Pines subdivision by giving at least 30 days' prior written notice to Licensor. Upon termination by Licensee of the License on all or part of the Licensed Premises, and if requested by Licensor, 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 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.

6. Condition of the Licensed Premises, Obligation to Make Repair, Obligation to Remain in Compliance with Laws: Licensee agrees and understands that it commences its use of the Licensed Premises "AS IS" and without any warranties of any kind of nature, including without any warranties as to the state of Licensor's title to the Licensed Premises. It shall be Licensee's sole obligation to maintain and make any necessary repairs to the Improvements and the Licensed Premises, and to do so in full compliance with the requirements of the El Paso County Department of Public Works and any and all other applicable state, federal, or local laws, regulations, and ordinances.

7. Indemnification/Hold Harmless: Licensee shall indemnify and hold Licensor 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' activities on the Licensed Premises, failure to comply with the terms of this Agreement, or failure to maintain the Licensed Premises in a safe condition. Nothing in this section shall be deemed to waive or otherwise limit the defenses available to Licensor pursuant to the Colorado Governmental Immunity Act §§24-10-101, C.R.S., *et seq.* or as otherwise provided by law.

8. Assignment: Licensee may assign this Agreement to the first purchaser of each lot within the Guntzelman Porcelain Pines subdivision ("Lot Purchaser"). The form of such assignment shall be reviewed and approved by County staff prior to execution, and a fully executed and recorded copy of such assignment shall be provided to Licensor. Neither Licensee nor a Lot Purchaser may otherwise assign or transfer this License or Agreement or any right or obligation hereunder, whether to a successor in title or other party, without the prior written consent of Licensor, which consent shall not be unreasonably withheld, conditioned, or delayed. Licensor and Licensee hereby expressly agree that the intent of any assignment is not to create an easement in the Licensed Premises, but rather, a License.

9. Allocation of Obligations. The obligations of Licensee, Lot Purchasers, and permitted assignees to Licensor under this agreement shall be joint and several. The obligations of Licensee, Lot Purchasers, and permitted assignees as among themselves shall be governed by the Access Easement and Maintenance Agreement for Guntzelman Porcelain Pines subdivision recorded at Reception No.

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10. 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 Licensor to confer on Licensee a usable right to construct, maintain, repair, and replace the Improvements described herein.

11. Right to Inspect: Licensor may enter upon the Licensed Premises at any time and without notice to inspect the condition of the Licensed Premises.

12. 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.

13. No Third-Party Beneficiaries: This agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party hereto for any breach or other failure to perform this Agreement.

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, and this Agreement may be amended only in writing and executed by duly authorized representatives of the Parties hereto.

15. **Binding:** 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 Licensor and 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 the Party for whom they are executing 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 the 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 the 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.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement as of the day and year first above written.

ATTEST:



By: Steve Schneider  
County Clerk and Recorder

**LICENSOR:**

BOARD OF COUNTY COMISIONERS  
OF EL PASO COUNTY, COLORADO

By: Cami Bremer  
Cami Bremer, Chair

APPROVED AS TO FORM:

By: Hori L. Seago  
County Attorney's Office

STATE OF Colorado )

) S.S.

COUNTY OF El Paso )

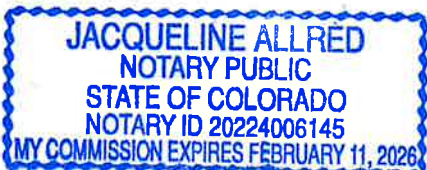
The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August 2024, by Cami Bremer as Chair of the Board of County Commissioners of El Paso County, Colorado, and as attested to by Steve Schleiker, County Clerk and Recorder.

WITNESS my hand and official seal.

My Commission Expires:

2/11/2026

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



**LICENSEE:**

Kristian & Christa Guntzelman

[Handwritten Signature]

Kristian Guntzelman, Owner

[Handwritten Signature]

Christa Guntzelman, Owner

STATE OF Ohio ) S.S

COUNTY OF Hamilton )

The foregoing instrument was acknowledged before me this 6 day of JUNE, 2024, by Kristian Guntzelman and Christa Guntzelman as owners of the real property described in Exhibit A.

WITNESS my hand and official seal.

My Commission Expires: 9/19/2026



KATHLEEN ALLGEIER  
Notary Public  
State of Ohio  
My Comm. Expires  
September 19, 2026

[Handwritten Signature]

Notary Public

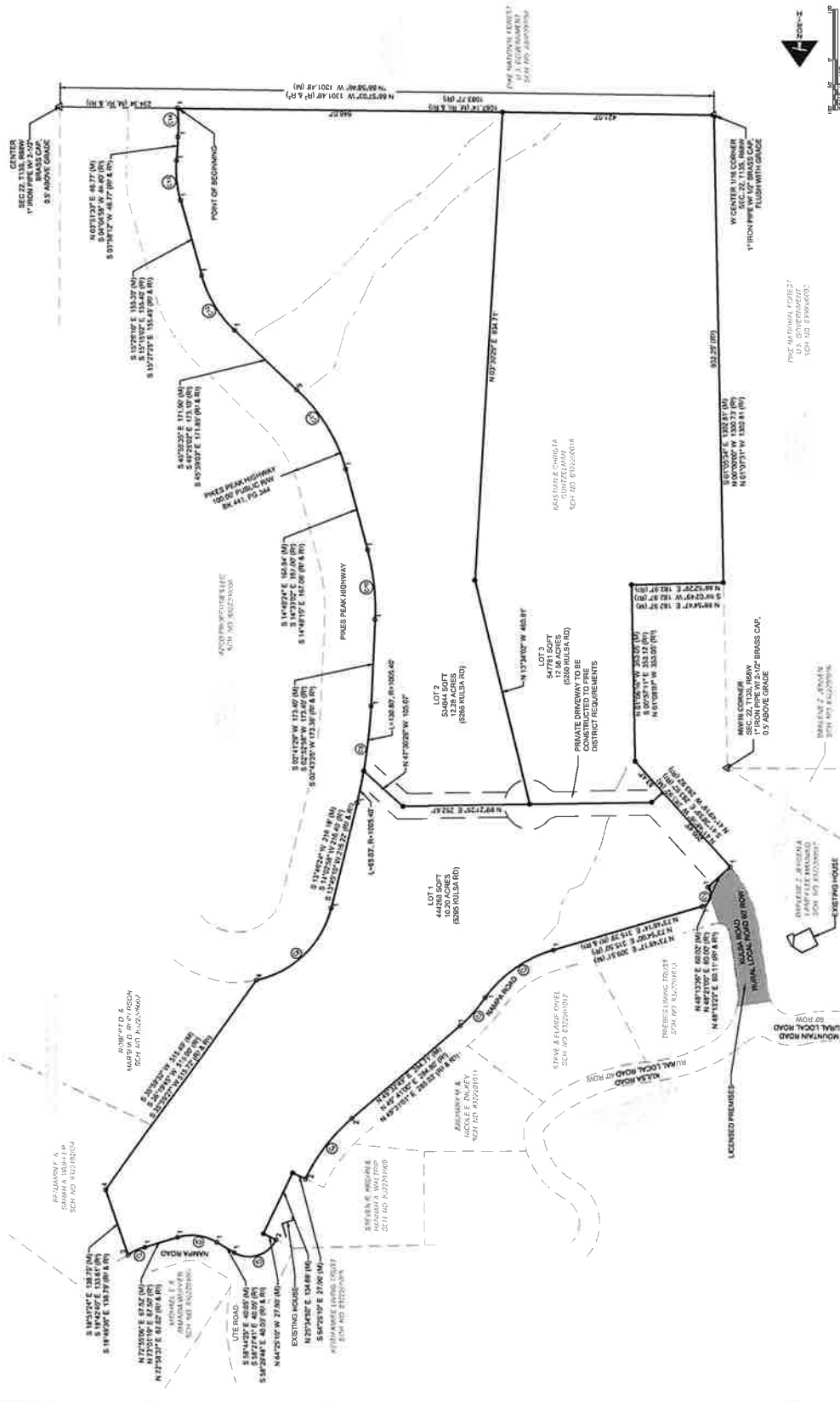




# LICENSED PREMISES EXHIBIT

## GUNTZELMAN PORCELAIN PINES SUBDIVISION

PART OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 13 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF EL PASO, STATE OF COLORADO



PROPERTY LINE CURVE DATA (R)

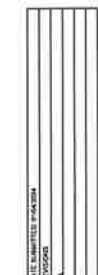
CURVE #	ANGLE	CHORD	DELTA	TANGENT	BEARING
C1	336.0	47.9	45.8	11.9	S 11°07'07" E
C2	344.0	18.0	18.0	3.0	S 11°07'07" E
C3	202.0	24.0	24.0	12.0	S 11°07'07" E
C4	300.0	18.0	18.0	9.0	S 11°07'07" E
C5	300.0	18.0	18.0	9.0	S 11°07'07" E
C6	300.0	18.0	18.0	9.0	S 11°07'07" E
C7	300.0	18.0	18.0	9.0	S 11°07'07" E
C8	300.0	18.0	18.0	9.0	S 11°07'07" E
C9	300.0	18.0	18.0	9.0	S 11°07'07" E
C10	300.0	18.0	18.0	9.0	S 11°07'07" E
C11	300.0	18.0	18.0	9.0	S 11°07'07" E
C12	300.0	18.0	18.0	9.0	S 11°07'07" E
C13	300.0	18.0	18.0	9.0	S 11°07'07" E
C14	300.0	18.0	18.0	9.0	S 11°07'07" E
C15	300.0	18.0	18.0	9.0	S 11°07'07" E

PROPERTY LINE CURVE DATA (R)

CURVE #	ANGLE	CHORD	DELTA	TANGENT	BEARING
C16	300.0	18.0	18.0	9.0	S 11°07'07" E
C17	300.0	18.0	18.0	9.0	S 11°07'07" E
C18	300.0	18.0	18.0	9.0	S 11°07'07" E
C19	300.0	18.0	18.0	9.0	S 11°07'07" E
C20	300.0	18.0	18.0	9.0	S 11°07'07" E
C21	300.0	18.0	18.0	9.0	S 11°07'07" E
C22	300.0	18.0	18.0	9.0	S 11°07'07" E
C23	300.0	18.0	18.0	9.0	S 11°07'07" E
C24	300.0	18.0	18.0	9.0	S 11°07'07" E
C25	300.0	18.0	18.0	9.0	S 11°07'07" E
C26	300.0	18.0	18.0	9.0	S 11°07'07" E
C27	300.0	18.0	18.0	9.0	S 11°07'07" E
C28	300.0	18.0	18.0	9.0	S 11°07'07" E
C29	300.0	18.0	18.0	9.0	S 11°07'07" E
C30	300.0	18.0	18.0	9.0	S 11°07'07" E

PROPERTY LINE CURVE DATA (R)

CURVE #	ANGLE	CHORD	DELTA	TANGENT	BEARING
C31	300.0	18.0	18.0	9.0	S 11°07'07" E
C32	300.0	18.0	18.0	9.0	S 11°07'07" E
C33	300.0	18.0	18.0	9.0	S 11°07'07" E
C34	300.0	18.0	18.0	9.0	S 11°07'07" E
C35	300.0	18.0	18.0	9.0	S 11°07'07" E
C36	300.0	18.0	18.0	9.0	S 11°07'07" E
C37	300.0	18.0	18.0	9.0	S 11°07'07" E
C38	300.0	18.0	18.0	9.0	S 11°07'07" E
C39	300.0	18.0	18.0	9.0	S 11°07'07" E
C40	300.0	18.0	18.0	9.0	S 11°07'07" E
C41	300.0	18.0	18.0	9.0	S 11°07'07" E
C42	300.0	18.0	18.0	9.0	S 11°07'07" E
C43	300.0	18.0	18.0	9.0	S 11°07'07" E
C44	300.0	18.0	18.0	9.0	S 11°07'07" E
C45	300.0	18.0	18.0	9.0	S 11°07'07" E



**SMH CONSULTANTS**  
 Civil Engineering • Land Surveying • Landscape Architecture  
 Manhattan, MO • P.O. Box 17626 • Independence, MO • P.O. Box 242182  
 Kansas City, MO • P.O. Box 1000 • Denver, CO • P.O. Box 114  
 Drawn By: JAM Project No: 07-0007 Job # 070007 PCD File # MS274  
**APRIL 2024**

**OWNER:** GUNTZELMAN & CHRISTA GUNTZELMAN  
 5381 SUGAR CAMP ROAD  
 311-729-0431

**SURVEYOR:** TIM SLOAN, VICE-PRESIDENT  
 2801 SOUTH TULSA STREET, STE 201  
 COLOMBO SPRINGS, CO 80803  
 719-462-1415

**ENGINEER:** SMH CONSULTANTS, P.A.  
 2801 SOUTH TULSA STREET, STE 201  
 COLOMBO SPRINGS, CO 80803  
 719-462-1415

**DATE SUBMITTED:** 04/23/24  
**SCALE:** AS SHOWN

**UNITS LEGEND**

- PROPERTY LINE CURVE DATA (R)
- ADJACENT PROPERTY LINES
- EXISTING HOUSE
- PROPOSED HOUSE
- EXISTING ROAD
- PROPOSED ROAD
- EXISTING EASEMENT
- PROPOSED EASEMENT
- EXISTING UTILITY
- PROPOSED UTILITY
- EXISTING FENCE
- PROPOSED FENCE
- EXISTING TREES
- PROPOSED TREES
- EXISTING POINTS
- PROPOSED POINTS
- EXISTING CORNERS
- PROPOSED CORNERS
- EXISTING MARKERS
- PROPOSED MARKERS
- EXISTING MONUMENTS
- PROPOSED MONUMENTS
- EXISTING SURVEY DATA
- PROPOSED SURVEY DATA
- EXISTING ADJACENT PROPERTY
- PROPOSED ADJACENT PROPERTY
- EXISTING ADJACENT EASEMENT
- PROPOSED ADJACENT EASEMENT
- EXISTING ADJACENT UTILITY
- PROPOSED ADJACENT UTILITY
- EXISTING ADJACENT FENCE
- PROPOSED ADJACENT FENCE
- EXISTING ADJACENT TREES
- PROPOSED ADJACENT TREES
- EXISTING ADJACENT POINTS
- PROPOSED ADJACENT POINTS
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- PROPOSED ADJACENT CORNERS
- EXISTING ADJACENT MARKERS
- PROPOSED ADJACENT MARKERS
- EXISTING ADJACENT MONUMENTS
- PROPOSED ADJACENT MONUMENTS
- EXISTING ADJACENT SURVEY DATA
- PROPOSED ADJACENT SURVEY DATA

**NOTES:**

1. Survey of 1/4 Section 22, Township 13 South, Range 68 West of the Sixth Principal Meridian, County of El Paso, State of Colorado.
2. Survey of 1/4 Section 22, Township 13 South, Range 68 West of the Sixth Principal Meridian, County of El Paso, State of Colorado.
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**LEGEND**

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- PROPOSED ADJACENT SURVEY DATA

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20. Survey of 1/4 Section 22, Township 13 South, Range 68 West of the Sixth Principal Meridian, County of El Paso, State of Colorado.

**LEGEND**

- PROPERTY LINE CURVE DATA (R)
- ADJACENT PROPERTY LINES
- EXISTING HOUSE
- PROPOSED HOUSE
- EXISTING ROAD
- PROPOSED ROAD
- EXISTING EASEMENT
- PROPOSED EASEMENT
- EXISTING UTILITY
- PROPOSED UTILITY
- EXISTING FENCE
- PROPOSED FENCE
- EXISTING TREES
- PROPOSED TREES
- EXISTING POINTS
- PROPOSED POINTS
- EXISTING CORNERS
- PROPOSED CORNERS
- EXISTING MARKERS
- PROPOSED MARKERS
- EXISTING MONUMENTS
- PROPOSED MONUMENTS
- EXISTING SURVEY DATA
- PROPOSED SURVEY DATA
- EXISTING ADJACENT PROPERTY
- PROPOSED ADJACENT PROPERTY
- EXISTING ADJACENT EASEMENT
- PROPOSED ADJACENT EASEMENT
- EXISTING ADJACENT UTILITY
- PROPOSED ADJACENT UTILITY
- EXISTING ADJACENT FENCE
- PROPOSED ADJACENT FENCE
- EXISTING ADJACENT TREES
- PROPOSED ADJACENT TREES
- EXISTING ADJACENT POINTS
- PROPOSED ADJACENT POINTS
- EXISTING ADJACENT CORNERS
- PROPOSED ADJACENT CORNERS
- EXISTING ADJACENT MARKERS
- PROPOSED ADJACENT MARKERS
- EXISTING ADJACENT MONUMENTS
- PROPOSED ADJACENT MONUMENTS
- EXISTING ADJACENT SURVEY DATA
- PROPOSED ADJACENT SURVEY DATA