

PUBLIC RIGHT OF WAY LICENSE AGREEMENT

Project: Curtis Trust

Schedule No: 6100000519 Addresses: 1920 and 2222, E. Baptist Road, Monument, CO 80132

THIS PUBLIC RIGHT-OF-WAY LICENSE AGREEMENT (“Agreement”), is made this ___ day of _____, 2020, between EL PASO COUNTY BY AND THROUGH THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY COLORADO, whose street address is 200 S. Cascade Avenue, Colorado Springs, CO 80903 (hereinafter “Licensor”), and THE CURTIS FAMILY LIVING TRUST, DATED FEBRUARY 9, 2018 (hereinafter, the “Curtis Trust” or “Licensee”), whose mailing address is 1920 E. Baptist Road, Monument, CO 80132. The Licensor and the Licensee may be collectively referred to herein as the “Parties” or singularly as ”Party.”

RECITAL:

WHEREAS, CURTIS TRUST owns certain real property located in El Paso County, Colorado on the Northwest corner of Baptist Road and Roller Coaster Road, with the legal description as set forth in Exhibit A (the “Property”); and

WHEREAS, Licensor owns that certain right-of-way known as Future Roller Coaster Road Realignment, and Baptist Road Right-of-Way Addition, within and adjacent to the Property, as depicted in Exhibit B.

WHEREAS, Licensee desires to use the Licensor’s right-of-way for the following purposes that include, but are not limited to: Baptist Road access gate (in vicinity of Roller Coaster Road intersection), landscaping, above ground irrigation, fencing, grazing and pasture, “AS IS”, 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 its right-of-way known as Future Roller Coaster Road Realignment and Baptist Right-of-Way Addition, for the purposes of said access gate, landscaping, above ground irrigation, fencing, grazing and pasture (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 upon the Licensor-owned right-of-way known as Future Roller Coaster Road Realignment and Baptist Road Right-of-Way Addition, as depicted in Exhibit B, attached hereto and incorporated herein by this reference (the “Licensed Premises”), for the Improvements (the “License”). The License is granted to Licensee to maintain and repair the Improvements within the Licensed Premises. The Licensee shall submit a site plan depicting all proposed Improvements to the Planning and Community Development Department for approval prior to the installation of said Improvements. 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 Licensees, their employees, agents, servants and invitees for any lawful purposes associated with the Improvements.

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 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 4 below.

4. Termination by Licensor: The Licensor shall be entitled to terminate the License on all or part of the Licensed Premises upon 30 days written notice to the Licensee. Upon the Licensor’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. Licensor and the Licensee shall retain their respective rights and obligations under this Agreement only with respect to any part of the Licensed Premises for which this License has not been terminated. The Licensor will be responsible for relocating existing fencing along Baptist Road at the time of County improvement widening within said Baptist Road Right-of-Way Addition. The Licensee shall remove or relocate to their own property all of the Improvements in the area where the License is being terminated within the 30-day notice period at Licensee’s sole expense. The Licensee shall not have any further rights or obligations with respect to any part of the Licensed Premises utilized by the Licensor. In the event of a termination under this Section 4, and if Licensee did not remove or relocate the Improvements within the 30 day termination notice period, Licensor will remove the Improvements and Licensee shall reimburse Licensor for its reasonable costs to remove the Improvements.

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 Licensor’s title to the Improvements and 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 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. Upon termination of the License for any reason other than termination by the Licensor as set forth in Paragraph 4 above, the Licensee shall return the Licensed Premises to substantially the same condition as existed immediately prior to the Commencement Date, ordinary wear and tear expected. The Licensee shall be responsible for any costs associated with moving the Improvements, if required in the future.

6. Indemnification/Hold Harmless. The Licensee shall indemnify and hold the Licensor and its employees, contractors, 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, their contractors', agents', or employees' failure to comply with the terms of this Agreement, failure to maintain the Licensed Premises in a safe condition, or use of the Licensed Premises. Nothing in this section shall be deemed to waive or otherwise limit the defense available to the Licensor 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: _____
_____, Chair

ATTEST:

By: _____
Chuck Broerman, County Clerk and Recorder

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

The foregoing instrument was acknowledged before this ___ day of _____, 2020, by _____, as Chair 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

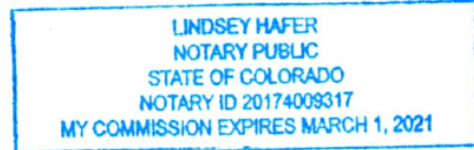
OF EL PASO COUNTY, COLORADO

By: _____
Assistant County Attorney

LICENSEE: THE CURTIS FAMILY LIVING TRUST, DATED FEBRUARY 9, 2018

By: Barry Wayne Curtis
Barry Wayne Curtis, co-Trustee

By: Tanja Theresa Curtis
Tanja Theresa Curtis, co-Trustee



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

The foregoing instrument was acknowledged before me on this 15th day of April, 2020, by Barry Wayne Curtis and Tanja Theresa Curtis, co-Trustees of THE CURTIS FAMILY LIVING TRUST, DATED FEBRUARY 9, 2018.

WITNESS my hand and official seal. My Commission Expires 3/01/2021

Lindsey Hafer
Notary Public