

LICENSE AGREEMENT
FOR PRIVATE IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY
For: Trails at Aspen Ridge
Schedule No: 5500000412 / Southeast of Powers Blvd. and Bradley Rd.

This License Agreement ("Agreement") is entered into and made effective this _____ day of _____, 20____, by and between [Waterview II Metropolitan District] Metropolitan District ("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 ("Licensor"). The Licensee and Licensor may also be referred to generally as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, Licensee is a special district formed under Title 32 of the Colorado Revised Statutes and provides certain services to the real property legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Licensor will own or owns certain public rights-of-way known as Legacy Hill Drive (to be platted), Frontside Drive (to be platted), Bradley Road, and Powers Boulevard adjacent to and within the Property; and

WHEREAS, in connection with development on the Property of a subdivision to be known as Trails at Aspen Ridge, Licensee desires to install and maintain landscape improvements, fencing and street lights (the "Improvements") within Licensor's right-of-way; and

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

WHEREAS, Licensor, as a convenience to Licensee, consents to allow Licensee to use portions of its rights-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-stated Recitals into this Agreement as if fully stated herein.
2. **Description and Use of the Licensed Premises.** Licensor hereby grants to Licensee a License upon those portions of Licensor's rights-of-way known as Legacy Hill Drive (to be platted), Frontside Drive (to be platted), Bradley Road, and Powers Boulevard generally

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El Paso County, CO



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illustrated in Exhibit B, attached hereto, which shaded area depicted on Exhibit B 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. If the Improvements include any lighting fixtures or features, other than streetlights, the use of such lighting must immediately cease upon written direction of the County Engineer and may not resume until written permission is granted. 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 construction, use, and maintenance of the Improvements. The Improvements shall be owned by Licensee.

3. Installation and Maintenance 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 the El Paso County Planning and Community Development Department and Department of Public Works. Maintenance and repair of the Improvements shall be done in accordance with applicable laws and County regulations and shall include snow removal within the Licensed Premises.

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 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 6** below.

5. 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 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 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 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 Licensee.

c. Licensors' Need for Right of Way. Licensors will not replace or relocate any Improvements placed within the public right of way or the Licensed Premises if Licensors 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 Licensors' 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 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. Maintenance of Improvements. As the Improvements will be a part Licensors' 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 Licensors; 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 Licensors 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, Licensors 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, Licensors 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.

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

g. Natural Disasters. Licensors 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 Licensors. Licensors at any time and 1) for any valid public purpose, as determined at Licensors' 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, Licensors 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 Licensors. Upon termination by the Licensee of the License on all or part of the Licensed Premises, and if requested by Licensors, 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, Licensors 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. Licensee agrees and understands that it commence use of the Licensed Premises in an "AS IS" condition and without any warranties of any kind or nature, including without any warranties as to the state of Licensors' 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 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 Licensors 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 or its contractors', agents', consultants' and/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 Licensors 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 Licensor agree to such assignment, Licensor and Licensee hereby expressly agree that the intent of such benefit to said assignees or 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 assignees or 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 Licensor to confer on Licensee a usable right to construct, maintain, repair, and replace the Improvements described herein.

12. Right to Inspect. Licensor may enter upon the Licensed Premises at any time 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. 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 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 the right to the performance of 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.

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.

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


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LICENSOR:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Mark Waller, Chair

ATTEST:


Chuck Broerman
County Clerk & Recorder



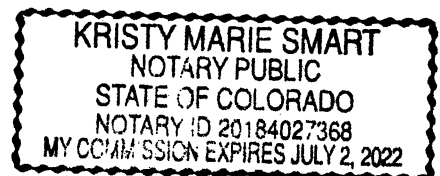
STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 7th day of April, 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: July 2, 2022


Notary Public



APPROVED AS TO FORM:

OFFICE OF THE COUNTY ATTORNEY
OF EL PASO COUNTY, COLORADO

By: 
Assistant County Attorney

WATERVIEW II METROPOLITAN DISTRICT

By: _____

Charles K. Cothorn

Charles K. Cothorn, President

Attest:

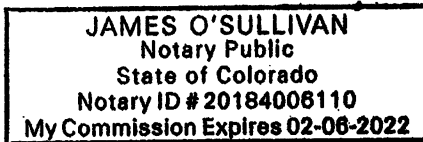
By: _____

The foregoing instrument was acknowledged before me this 10th day of February, 2022,
by Charles K. Cothorn, President

WATERVIEW II METROPOLITAN DISTRICT

Witness my hand and official seal.

My commission expires: 02-06-2022



[Signature]

Notary Public

Executed this 10th day of February, 2022, by:

EXHIBIT A
Legal Description of Property

LEGAL DESCRIPTION:

KNOW ALL MEN BY THESE PRESENTS:

THAT COLA LLC. AND CPR ENTITLEMENTS LLC., BEING THE OWNERS OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

A TRACT OF LAND LOCATED IN A PORTION OF THE WEST 1/2 OF SECTION 9, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 9; THENCE S00°19'32"E ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 9, A DISTANCE OF 1613.76 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION:

1. THENCE S00°19'32"E CONTINUING ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 9, A DISTANCE OF 3638.37 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9;
2. THENCE S89°33'35"W ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, A DISTANCE OF 2495.44 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF POWERS BOULEVARD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;
3. THENCE N00°29'10"W ON SAID EASTERLY RIGHT-OF-WAY, A DISTANCE OF 1914.54 FEET;
4. THENCE S90°00'00"E A DISTANCE OF 515.00 FEET;
5. THENCE N00°00'00"E A DISTANCE OF 148.75 FEET TO A NON-TANGENT CURVE TO THE LEFT;
6. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 260.00 FEET, A DELTA ANGLE OF 13°32'35", AN ARC LENGTH OF 61.46 FEET, WHOSE LONG CHORD BEARS N28°47'53"E A DISTANCE OF 61.31 FEET;
7. THENCE N22°01'35"E A DISTANCE OF 538.15 FEET;
8. THENCE N67°58'24"W A DISTANCE OF 40.00 FEET TO A NON-TANGENT CURVE TO THE RIGHT;
9. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 450.00 FEET, A DELTA ANGLE OF 35°44'30", AN ARC LENGTH OF 280.72 FEET, WHOSE LONG CHORD BEARS N39°54'03"E A DISTANCE OF 276.19 FEET;
10. THENCE N57°46'18"E A DISTANCE OF 68.47 FEET TO POINT OF CURVE TO THE LEFT;
11. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 75.00 FEET, A DELTA ANGLE OF 43°29'55", AN ARC LENGTH OF 56.94 FEET, WHOSE LONG CHORD BEARS N36°01'21"E A DISTANCE OF 55.58 FEET;
12. THENCE N15°39'12"W A DISTANCE OF 394.68 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;
13. THENCE N74°20'48"E ON SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 120.00 FEET;
14. THENCE S15°39'12"E A DISTANCE OF 392.40 FEET TO A NON-TANGENT CURVE TO THE LEFT;
15. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 75.00 FEET, A DELTA ANGLE OF 60°04'25", AN ARC LENGTH OF 78.64 FEET, WHOSE LONG CHORD BEARS S75°37'00"E A DISTANCE OF 75.08 FEET;
16. THENCE N74°20'48"E A DISTANCE OF 199.80 FEET;
17. THENCE S15°39'12"E A DISTANCE OF 40.00 FEET;
18. THENCE N74°20'48"E A DISTANCE OF 160.21 FEET;
19. THENCE N15°39'12"W A DISTANCE OF 469.99 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;

THE FOLLOWING FOUR (4) COURSES ARE ON SAID SOUTHERLY RIGHT-OF-WAY OF BRADLEY ROAD;

20. THENCE N74°20'48"E A DISTANCE OF 385.14 FEET;
21. THENCE ON THE ARC OF SAID CURVE, HAVING A RADIUS OF 2,759.79 FEET, A DELTA ANGLE OF 15°09'41", AN ARC LENGTH OF 730.29 FEET, WHOSE LONG CHORD BEARS N81°55'38"E A DISTANCE OF 728.16 FEET;
22. THENCE N89°30'29"E A DISTANCE OF 3.77 FEET TO THE POINT OF BEGINNING.

THE ABOVE TRACT OF LAND CONTAINS 7,352,922 SQUARE FEET OR 168.800 ACRES, MORE OR LESS.

Exhibit B
The "Licensed Premises "

POWERS BLVD.
210' R.O.W.
(FREEWAY)

BRADLEY RD.
210' R.O.W.
(FREEWAY)

LEGACY HILL DRIVE BY R.O.W.
(NON-RESIDENTIAL COLLECTOR - 1)
(PLATTED WITH FILING NO. 1)

