RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORS OF BENT GRASS METROPOLITAN DISTRICT AUTHORIZING THE IMPOSITION OF INFRASTRUCTURE DEVELOPMENT FEES.

WHEREAS, Bent Grass Metropolitan District, El Paso County, Colorado (the "District") is a quasi-municipal corporation duly organized and existing as a metropolitan district under the laws of the State of Colorado (the "State"), including particularly Title 32 of the Colorado Revised Statutes; and

WHEREAS, the District was formed in order to design, construct and finance certain public improvements within the District; and

WHEREAS, the District has the authority to incur bonded indebtedness or other financial obligations for purpose of paying for the construction of public improvements;

WHEREAS, the District will require certain platting fees and building permit fees to be assessed against new construction and collected at the time of platting and building permits.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BENT GRASS METROPOLITAN DISTRICT, EL PASO COUNTY, COLORADO, THAT THE DISTIRCT WILL ASSESS AND COLLECT THOSE PLATTING FEES AND BUILDING PERMIT FEES AS SET FORTH:

The platting fee for all properties shall be \$5,500 per acre based upon developable acreage net of dedicated public rights-of-way.

The building permit fee would be \$500 per single family residential unit; \$350 for a multi-family residential unit; and \$1.00 per square foot of commercial and industrial property.

PASSED, ADOPTED AND APPROVED by the Board of Directors of Bent Grass Metropolitan District this 2nd day of October 2012.

	Randy Case II, President	
ATTEST:		

RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORS OF BENT GRASS METROPOLITAN DISTRICT RELATING TO CERTAIN EL PASO COUNTY ROAD IMPROVEMENTS.

WHEREAS, Bent Grass Metropolitan District, El Paso County, Colorado (the "District") is a quasi-municipal corporation duly organized and existing as a metropolitan district under the laws of the State of Colorado (the "State"), including particularly Title 32 of the Colorado Revised Statutes; and

WHEREAS, the District was formed in order to design, construct and finance certain public improvements within the District or for the benefit of the District; and

WHEREAS, the District has the authority to incur bonded indebtedness or other financial obligations for purpose of paying for the construction of public improvements; and

WHEREAS, El Paso County wants assurances that the District will install certain road improvements in the future; and

WHEREAS, the District is willing to undertake and agree to the construction and installation of certain improvements provided that it is not the intent of this Resolution to constitute a multi-year fiscal obligation; however these improvements are set forth in Exhibit C-2 of the Service Plan which was approved September 24, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BENT GRASS METROPOLITAN DISTRICT, EL PASO COUNTY, COLORADO, THAT THE DISTRICT WILL CONSTRUCT AND INSTALL THE ACCESS LANE FOR SOUTHBOUND MERIDIAN ROAD WHEN THE TRAFFIC WARRENTS THE SAME WITH THE EXTENTION OF THE STORM PIPES UNDER BENT GRASS MEADOWS DRIVE; IF SAID STORM PIPES ARE NEEDED, AND THE DISTRICT WILL INSTALL TRAFFIC SIGNALS AT THE INATERSECTION OF BENT GRASS MEADOWS DRIVE AND MERIDIAN ROAD WHEN THE TRAFFIC WARRANTS THE SAME AND THE DISTRICT WILL MAINTAIN ONSITE DRAINAGE PONDS THAT FALL WITHIN THE DEVELOPMENT PLAN AFTER THE CONSTRUCTION WARRANTY PERIOD. ALSO THE DISTRICT WILL MAINTAIN THE EMERGENCY ACCESS ROADWAY UNTIL IT HAS BEEN COMPLETELY CONSTRUCTED TO ITS ULTIMATE DESIGN. THE DISTRICT RECOGNIZES THAT SOME STORM FLOWS FROM THE SINGLE FAMILY RESIDENTIAL DEVELOPMENT WILL FLOW ONTO THE COMMERCIAL SITE TO A DETENTION POND USED BY BOTH THE COMMERCIAL AND RESIDENTIAL DEVELOPMENTS. THE DIRECT ACCESS FROM 7-11 TO BENT GRASS MEADOWS DRIVE WILL BE REMOVED WHEN THE TRAFFIC

WARRANTS IT.	
PASSED, ADOPTED AND APPROVED by the Bol District this 29 th day of April 2014.	ard of Directors of Bent Grass Metropolitan
Ī	Randy Case II, President
ATTEST:	

PUBLIC RIGHT OF WAY LANDSCAPE LICENSE AGREEMENT

(Bent Grass Metropolitan District)

RIGHT-OF-WAY LANDSCAPE LICENSE **AGREEMENT** THIS **PUBLIC** , 2014, between EL PASO ("Agreement"), is made this day of 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"), a quasi-municipal corporation and political subdivision of the State of Colorado and Bent Grass Metropolitan District (hereinafter "Licensee"), whose mailing address is in care of Randy Case, 660 Sothpointe, Suite 210, Colorado Springs, CO 80906. The Licensor and the Licensee may be singularly referred to herein as the Party or collectively referred to herein as the Parties.

RECITALS:

WHEREAS, as a condition of approval of the Planned Unit Development Plan for **BENT GRASS RESIDENTIAL PUD DEVELOPMENT PLAN – PUD 14-002** ("PUD Plan") (the "Developer") is required to meet landscaping requirements as defined in said PUD Plan; and

WHEREAS, the Developer desires to use certain portions of the Licensor's road rights-of-way within the **BENT GRASS** Subdivision for landscaping improvements as required by said PUD Plan and as defined herein; and

WHEREAS, without the use of said County right of way, the Developer would not be able to comply with the landscaping requirements of said PUD Plan; and

WHEREAS, the Licensee wishes to install and maintain on behalf of the Developer those portions of the required landscaping lying with County right-of-way; and

WHEREAS, because the roads within **BENT GRASS** are approved and accepted for maintenance by the Licensor, the Licensee is required to obtain all necessary permits and pay all fees prior to performing any work in the Licensor's right-of-way; and

WHEREAS, Licensor, as a convenience to Licensee, consents to allow Licensee to use a portion of certain road rights-of-way as shown on the shaded areas depicted on the attached drawing marked Exhibit 'A' (the "Licensed Premises") for the purposes of constructing, installing, maintaining, repairing and replacing landscaping improvements, such as, but not limited to, landscape grading, irrigation, controllers, lighting, mulch, and planting (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. <u>Incorporation of Recitals:</u> The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.
- 2. <u>Description and Use of the Licensor's Premises:</u> Licensor hereby grants to Licensee a license for ingress and egress upon the Licensed Premises for construction, installation, maintenance and repair of the Improvements (the "License"). 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 a real property 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 Licensee and **BENT GRASS**. The Improvements shall be owned by Licensee.
- 3. <u>Term and Commencement of Use:</u> 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 either Party as more fully set forth in Paragraph 5 below.

4. Termination:

- d. <u>Termination by Licensor</u>. Licensor shall notify Licensee as soon as possible if Licensor is considering terminating the License on all or part of the Licensed Premises. Licensor at any time and for any valid public purpose, as determined at Licensor's sole discretion, 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. Upon such termination, Licensor may direct Licensee to remove all or a portion of the Improvements from the Licensed Premises at its own expense, and the Licensee shall restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.
- e. <u>Termination by Licensee</u>. Licensee shall notify Licensor as soon as possible if Licensee is considering terminating the License on all or part of the Licensed Premises. Licensee at any time and for any valid public purpose 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;, provided, however, that no such termination shall become effective unless and until an amendment to Developer's PUD Plan regarding the

landscaping condition has been approved by the County. 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.

- f. <u>Effect of Termination</u>. 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. <u>Condition of the Licensed Premises, Obligation to Make Repairs, Obligation to Remain in Compliance with Laws:</u> 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 Licensor's title to the Licensed Premises. It shall be the Licensee's sole obligation to maintain and make any necessary repairs to the Improvements, and to do so in full compliance with the requirements of the El Paso County Public Services 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.
- 7. Indemnification/Hold Harmless: The Licensee shall indemnify and hold the 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 Licenses Premises in a safe condition 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.
- 8. 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 consent 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, upon 30 days prior written notice, as set forth in Paragraphs 4 and 5 above.

- 9. <u>Construction:</u> 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.
- 10. <u>Right to Inspect</u>: Licensor may enter upon the Licensed Premises at any time and without notice to inspect the condition of the Licensed Premises.
- 11. <u>Remedies</u>: 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.
- 12. <u>Entire Agreement</u>: This Agreement, together with all exhibits attached hereto, constitute 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.
- 13. <u>Binding:</u> 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.
- 14. <u>Authority:</u> The undersigned hereby acknowledge and represent that they have legal authority to bind the Party for whom they are executing this Agreement.
- 15. <u>Applicable Law:</u> 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.
- 16. 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.
- 17. <u>Recording:</u> 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.

Licensor:	Licensee:
BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO	Bent Grass Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado
By:	
By: Dennis Hisey, Chair	By:, President
Attest:	, President
By: County Clerk and Recorder	Attest:
County Clerk and Recorder	By:
	, Secretary
STATE OF COLORADO)	
	nowledged before me this day of the Board of County Commissioners of the attested to by Wayne W. Williams, County
WITNESS my hand and official seal.	
My Commission Expires:	·•
Notary F	Public
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DEVELOPMENT AGREEMENT Bent Grass

This Development Agreement ("Agreement") is entered into this 5th day of March, 2015 ("Effective Date") by and between the County of El Paso, State of Colorado, a body corporate and politic and a political subdivision of the State of Colorado, ("County"), by and through the Board of County Commissioners of El Paso County, Colorado ("Board"), the Bent Grass Metropolitan District, a special district duly formed pursuant to Title 32, Colorado Revised Statutes ("District"), and Bahr Holdings, LLC, Nextop Holdings, LLC, R.W. Case, M.D. McAllister, Long Hope Joint Venture, LLP, Marksheffel-Woodmen Investments, LLC, B.T. Long, R.W. Case II, Lindsay J. Case, Raymond L. Reilly Jr. and Tanya T. Reilly (collectively may be referred to as "Land Owners") and Rivers Bent Grass, LLLP ("Rivers") and Land First Inc. ("Land First"). The County, the District, Land Owners, Rivers and Land First may be referred to hereinafter as the Parties.

Recitals

WHEREAS, the Land Owners, Rivers and Land First have previously received County approval for the following land use applications and related subdivision improvements agreements ("Land Use Approvals"): Bent Grass East Commercial Filing 1 Final Plat, Resolution No. 13-142; Bent Grass Residential PUD Rezone, Resolution No. 14-259; Bent Grass Residential Preliminary Plan, Resolution No. 14-260; Bent Grass East Commercial Filing 2 Final Plat, Resolution No. 14-340; and Bent Grass Residential Filing No. 1 Final Plat, Resolution No. 14-404; and

WHEREAS, the Land Use Approvals included conditions, notations and/or provisions addressing one or both of the following issues: the construction of a temporary gravel access road within right-of-way set aside for Bent Grass Meadows Drive between the western boundary of Bent Grass Residential Filing No. 1 and the current westernmost segment of Bent Grass Meadows Drive; and the construction of improvements to the intersection of Bent Grass Meadows Drive and Meridian Road, including but not limited to acceleration and deceleration lanes, drainage improvements and a traffic signal; and

WHEREAS, the Parties have agreed to amend the requirements regarding scope and timing with respect to the two issues described above and wish to memorialize their agreement in a single document rather than amend each of the Land Use Approvals.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. <u>Incorporation of Recitals</u>. The Parties hereby incorporate by reference the above-stated Recitals into this Agreement as if fully set forth herein.

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- 2. <u>Bent Grass Meadows Drive</u>. In lieu of constructing a temporary access connection for Bent Grass Meadows Drive from the western property line of Bent Grass Residential Filing No. 1 to the existing roadway adjacent to Lot 1, Latigo Business Center Filing No. 1, the following provisions shall apply and are generally visually depicted in the attached Exhibit A.
 - a. No lot in Bent Grass Residential Filing No. 1 shall be sold, conveyed or transferred, whether by Deed or by Contract, to an individual homeowner, nor shall building permits be issued, until and unless the public improvements necessary for the development of Lots 1-25 lots have been completed and preliminarily accepted by the County, including but not limited to, a segment of Bent Grass Meadows Drive from its current terminus west of Meridian Road through the intersection with Avena Road and the detention pond on adjacent property within Bent Grass East Commercial Filing 2.
 - b. Lots 26-104 of Bent Grass Residential Filing No. 1 shall not be sold, conveyed or transferred, whether by Deed or by Contract, to an individual homeowner nor shall building permits be issued, until and unless all remaining improvements set forth in the Estimate of Guaranteed Funds attached to the Subdivision Improvements Agreement for Bent Grass Residential Filing No. 1 have been completed and preliminarily accepted, including but not limited to, a segment of Bent Grass Meadows Drive from its terminus at Avena Road west to a point one hundred feet (100 ft.) west of the intersection with Sea Oats Drive.
 - c. No additional residential final plats shall be recorded unless and until financial assurances are provided to the County by the District or the developer thereof and a subdivision improvements agreement or other agreement is approved for the completion of Bent Grass Meadows Drive from its terminus west of Sea Oats Drive to its western terminus connecting to Bent Grass Meadows Drive adjacent to Lot 1, Latigo Business Center Filing No. 1, as depicted on Exhibit A.

3. Intersection Improvements.

a. The District shall be responsible to the County for causing the construction of necessary improvements to the intersection of Bent Grass Meadows Drive and Meridian Road, including but not limited to, acceleration and deceleration lanes, drainage improvements and a traffic signal ("Intersection Improvements"), when warranted by the traffic generated from Bent Grass residential and commercial developments. Each new plat or commercial site development plan shall submit a traffic study to determine when the Intersection Improvements are warranted. Construction of the Intersection Improvements shall commence within six months of notice to do so from the County Engineer based upon traffic analysis and shall be completed within one year of such notice, unless extended by mutual agreement.

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- b. The District shall collect from Rivers the sum of \$1,000.00 per residential lot at the time of the issuance of building permit to be held in escrow by the District for the construction of the Intersection Improvements, which amounts shall be released upon completion of the Intersection Improvements. The County shall not enforce, track or otherwise monitor compliance of these payments.
- 4. <u>Amendment of Land Use Approvals</u>. It is the intent of the Parties that the provisions of this Agreement replace and supersede any conditions, notations and/or provisions of the Land Use Approvals that specifically relate to the subject matter of this Agreement. By approving this Agreement, the County amends each of the Land Use Approvals to conform to its provisions. To the extent that a conflict exists between the provisions of this Agreement and any conditions, notations and/or provisions of the Land Use Approvals, the provisions of this Agreement shall control.
- 5. <u>Limitation on Obligations and Liability</u>: The obligation and liability of any Party hereunder shall only continue until such time as the Bent Grass Meadows Drive and Intersection Improvements remain incomplete. After completion of all improvements contemplated herein, preliminary acceptance thereof by the County and expiration of the associated 2-year warranty period for said improvements, then all liabilities of the Parties shall terminate without further action by the Parties.

6. General Provisions.

- a. This Agreement may be amended by mutual written agreement of all Parties or their respective successors or assigns.
- b. This Agreement shall be an obligation on and run with the real property which is the subject of the Land Use Approvals and shall only be binding upon the individuals or entities named hereinabove to the extent they retain any ownership interest in such real property.
- c. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Venue shall be exclusively in the District or County Court in and for El Paso County, Colorado.
- d. The undersigned hereby acknowledge and represent that they have the legal authority to bind their respective Party to this Agreement.
- e. 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.
- f. 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.

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- g. 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 for any breach or other failure to perform this Agreement.
- h. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall all be attached to a single instrument.
- i. The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved in law or in equity. The Parties further agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, in the event of a breach of this Agreement, any Party may request a court of competent jurisdiction to enter a writ of mandamus to compel the breaching Party to perform under this Agreement, and any Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders for specific performance, to compel the other to perform in accordance with the obligations set forth in this Agreement.
- j. Any costs, excluding attorney fees, incurred by the County in enforcing the terms of this Agreement including, without limitation, court costs shall be borne by the non-County parties should the County prevail. The liability of a particular Land Owner, Rivers or Land First pursuant to the foregoing provision shall terminate once such Land Owner, Rivers or Land First ceases to have any ownership interest in the real property which is subject to the Land Use Approvals. In any such action, each party shall be responsible for its own attorney fees regardless of which party prevails in said action.
- k. A fully executed copy of this Agreement shall be recorded in the records of the El Paso County Clerk and Recorder.

In witness of the foregoing provisions, the Parties have executed this Agreement as of the Effective Date set forth above.

ATTEST: Sylven School

County Clerk & Recorder 15-109a

APPROVEDOS TO FORM:

County Attorney's Office

BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

By: A Pennis Hisey Chair

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BENT GRASS METROPOLITAN DISTRICT	LONG HOPE JOINT VENTURE, LLP
BENT GRASS METROPOLITAN DISTRICT	
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RandleW. Gse II, President Name and Title	Name and Title
BAHR HOLDINGS, LLC	MARKSHEFFEL-WOODMEN INVESTMENTS, LLC
Ву:	By:
Brian Bahr, Managing Member Name and Title	Lindsay J. Case, Member Mgr Name and Title
NEXTOP HOLDINGS, LLC	LAND FIRST INC.
Brian Bohr, Manager	By: Ronald Waldthausen, President
Name and Title	
R.W.CASE	M.D. MCALLISTER
4 W	Malaucuter
B.T. LONG	R.W. CASE II
879	Mubara
LINDSAY J. CASE	RIVERS BENT GRASS, LLLP
Ton	Ву:
	Riser Devolgment, Inc. 45 6.P. Name and Title Brian Bahr, President
RAYMOND L. REILLY, JR.	Janya T. REILLY Self