

## AMENDMENT TO HAUL ROAD AGREEMENT

This First Amendment to a 2004 Haul Road Agreement (the "Amendment") is entered into on the 31<sup>st</sup> day of August, 2017 (the "Effective Date") by and between the Town of Winter Park, a Colorado home rule municipality (the "Town") and Cornerstone Winter Park Holdings, LLC (each a "Party" and collectively, the "Parties").

**WHEREAS**, the Town and Cornerstone previously entered into a Haul Road Agreement dated June 15, 2004 (the "2004 Haul Road Agreement"); and

**WHEREAS**, the Parties hereto seek to modify the 2004 Haul Road Agreement as provided for in this Amendment.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Access and Use.

a. The 2004 Haul Road Agreement shall expressly include the right of Cornerstone and its employees and authorized contractors (collectively "Cornerstone") to access, use and connect to Kings Crossing Road, on a temporary basis, from the gated road (commonly referred to as "Old King Road") located just west of the location at which Kings Crossing Road crosses the Union Pacific Railroad tracks as shown on the attached **Exhibit 1** to the intersection of Lions Gate Road and Kings Crossing Road, subject to the terms and conditions stated herein.

b. Use of Kings Crossing Road by Cornerstone at the above described location shall be limited to construction purposes related to Cornerstone's construction of an underpass structure and railroad crossing located in the Town of Fraser north of the existing Kings Crossing Road at-grade crossing (the "Underpass"), and for purposes of transporting construction materials utilized in connection with the construction of the Underpass from a storage site maintained by Cornerstone at the westerly end of Old King Road on Cornerstone's property. Cornerstone's right to access, use and connect to Kings Crossing Road as described herein for construction purposes shall expire at the earlier of the completion of the Underpass or December 31, 2018. When entering onto Kings Crossing Road at the Old King Road location with any trucks, construction equipment or other construction vehicles larger than a standard pick-up truck, instead of proceeding south (uphill) on Kings Crossing Road to turn-around, Cornerstone shall use the west-bound lane of Kings Crossing Road to travel east (downhill) across the railroad tracks, provided that Cornerstone timely deploys flagmen with signage on both sides of the crossing to stop traffic during such crossings, pursuant to a traffic control plan approved by the Town.



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2. Temporary Closure.

a. The Town further grants permission to Cornerstone to temporarily close all of Kings Crossing Road at the location of the existing Kings Crossing Road at-grade railroad crossing (the "Crossing") for no longer than the 72-hour period commencing September 6, 2017 at 8:00 a.m. through September 9, 2017 at 8:00 a.m., or for such other maximum 72-hour period as designated and required by Union Pacific Railroad ("UPRR"), provided that for any alternative closure period, the Town is given 7 days' advanced written notice of any alternative closure; no part of such alternative closure occurs on a Friday, Saturday or Sunday.

b. One additional temporary closure of Kings Crossing Road, with a maximum duration of 72 hours, is granted by the Town to Cornerstone for the closure of the crossing associated with UPRR's restoration of the tracks back to their current location. Such second temporary closure shall be subject to the same conditions stated above and applicable to the first temporary closure, but shall instead require 14-day advance notice from Cornerstone, and Cornerstone, at its own liability and expense, shall place signage notifying the public of the upcoming closure, which signage shall be approved by the Town in advance, and in place for the 14 days immediately preceding such second temporary closure.

c. For both temporary closures of Kings Crossing Road, regardless of when they take place, the following conditions shall also apply: the Crossing is not materially changed or damaged; at the end of such 72-hour closure, the Crossing is immediately thereafter open and available for public use in substantially the same condition that existed before the closure with all signage removed; any improvements or changes to the Crossing are in substantial conformance with the improvements identified on Page 26 of the plans titled "UPRR UNDERPASS AT GRAND PARK DRIVE IN FRASER, COLORADO UPRR BRIDGE 60.00 ON MOFFAT TUNNEL SUBDIVISION TRACK SHOOFLY AND BRIDGE PLANS", "100" FINAL TRACK ONLY", dated September 16, 2014; and prior to any temporary closure or obstruction of Kings Crossing Road at the location of the Crossing, or when restricting travel to one-lane or otherwise unsafe operations, Cornerstone shall ensure that a traffic control plan is in place, and approved by the Town. Cornerstone shall not cause any additional closing or obstruction of Kings Crossing Road without express Town permission and consent.

3. Cornerstone's Obligations. During the term of this Amendment, Cornerstone shall:

a. Reasonably maintain the segment of Kings Crossing Road used by Cornerstone pursuant to this Amendment free of dirt, mud and other obstructions caused by Cornerstone's activities. Cornerstone shall sweep this portion of Kings Crossing Road at the end of each day Kings Crossing Road is used by Cornerstone with equipment approved by the Town, which approval shall not be unreasonably withheld.

b. Cornerstone shall install, maintain and use a vehicle tracking pad where its construction vehicles enter onto Kings Crossing Road from the Old King Road location. The vehicle tracking pad shall be located adjacent to Kings Crossing Road, but not on the paved portions of Kings Crossing Road.

c. Cornerstone shall employ dust control measures on its property, by watering roads and disturbed areas of ground on Cornerstone's property used for Underpass construction that are within 250 yards of the Town boundaries. Such watering shall be employed by Cornerstone as necessary to reasonably control construction activity dust during the term of this Amendment.

d. Cornerstone's use of, and activities on Kings Crossing Road pursuant to this Amendment shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday with the exception of the Temporary Closures specified in paragraph 2 above which work may occur any time during the 72 hour specified Temporary Closure. Truck traffic on Kings Crossing Road shall be limited to 30 vehicle trips per day.

e. Cornerstone's use of Kings Crossing Road shall comply with all other provisions of the Town's Municipal Code and other applicable law.

f. Cornerstone shall be responsible for any damage to any Town improvements within the segment of Kings Crossing Road used by Cornerstone pursuant to this Amendment, to the extent such damages are caused by or result from Cornerstone's construction activities on, use of, or closure of Kings Crossing Road, including damage to that portion of Kings Crossing Road utilized by Cornerstone, the Crossing, quiet zone improvements at the Crossing, signs, gates, medians, pavement, sidewalks, gutters, drains and other Town improvements.

g. Cornerstone shall promptly pay the Town for the reasonable costs to remedy any such damage caused by Cornerstone, no later than May 31, 2019. If there is a dispute as to whether damage was caused by Cornerstone or the cost to remedy any such damage, the Town and Cornerstone agree to submit such dispute to a third-party engineering firm (Bowman Engineering) (the "Firm"). The Firm is authorized by the Parties to resolve the dispute and determine the amount of damage attributable to Cornerstone's use of King Crossing Road pursuant to this Amendment, and the reasonable cost to repair or remedy that damage. The decision of the Firm shall be binding on the Parties and not appealable. Authorized representatives of the Town, Cornerstone and Bowman shall meet on site no later than September 15, 2017 to photograph and document the current condition of the segment of Kings Crossing Road used by Cornerstone pursuant to this Amendment, including any damage that may have already occurred.

h. On or before September 15, 2017, Cornerstone shall provide a letter of credit or a cash deposit in the amount of \$25,000.00 with the Town as payee/beneficiary/obligee to be used for any damage to Kings Crossing Road or other Town improvements caused by Cornerstone in connection with its access to, use of, connection to or closing of any portion of Kings Crossing Road. If the amount is paid in cash, it shall be deposited in a discrete escrow account with the Town's financial institution. In the event of any dispute regarding damage to the improvements described in paragraph 3(f) above, it shall be resolved pursuant to paragraph 3(g) above, before the Town is permitted to draw on the letter of credit or withdraw funds from the escrow account. This amount of surety or deposit shall not represent a cap on the amount Cornerstone may be liable for any damage caused by Cornerstone as described in paragraph



3(f) above. Any amount of surety or cash remaining at the termination of this Amendment shall be released and/or returned to Cornerstone upon full satisfaction of all obligations and reimbursements provided for herein.

5. Other Agreements. Nothing in this Amendment shall be construed as a waiver of any rights, obligations, claims or defenses with respect to the Annexation Agreement entered into by the Parties and dated August 24, 2004, as amended by an amendment dated March 6, 2007, and the Order of Judgment and Dismissal in Case No. 13CV30045, Grand County District Court, or with respect to the status of Old King Road and any connection between Kings Crossing Road and the Cornerstone property. Except as modified herein, the 2004 Haul Road Agreement shall remain in effect until the earlier of the completion of the Underpass or December 31, 2018, after which the Town and Cornerstone agree that the 2004 Haul Road Agreement, as amended by this Amendment, shall terminate. In the event of any actual or alleged inconsistency or conflict between this Amendment and the 2004 Haul Road Agreement, this Amendment shall control.

6. Term. The term of this Amendment shall commence on the Effective Date and shall terminate on December 31, 2018, however, the obligation for Cornerstone to pay for any damage caused by Cornerstone to the segment of Kings Crossing Road used by Cornerstone pursuant to this Amendment shall survive this termination date until satisfied.

7. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado.

b. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either party shall not constitute a waiver of any of the other terms or obligations of this Agreement.

c. Integration. This Agreement and any attached exhibits constitute the entire Agreement between the parties, superseding all prior oral or written communications.

d. Third Parties. There are no intended third-party beneficiaries to this Agreement.

e. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

f. Modification. This Agreement may only be modified upon written agreement of the Parties.

g. Assignment. Neither this Agreement nor any of the rights or obligations of the parties hereto, shall be assigned by either Party without the written consent of the other.



h. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

i. This Agreement resolves the issues raised by the Town in its request for Temporary Restraining Order, its Motion for Preliminary Injunction, and its Second Claim for Relief in Case No. 2017CV030078, Grand County District Court (the "Litigation"). The Town and Cornerstone shall ask the Court to dissolve and lift the Temporary Restraining Order, the Town's Motion for Preliminary Injunction will be withdrawn, and the Town's Second Claim for Relief will be dismissed, with each party to pay their own costs and attorney's fees. The parties direct their counsel to file the necessary pleadings to effectuate same. The Town will file and serve an Amended Complaint in the Litigation, no later than September 7, 2017, excluding its current Second Claim for Relief and modifying its First Claim for Relief to exclude the issues resolved by this Amendment. Cornerstone will file a response to the Town's Amended Complaint no later than September 21, 2017.

j. The Town shall dismiss the Summons and Complaints in Case No. 170497 issued to Matthew Wells and Harley Heck on July 31, 2017.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**TOWN OF WINTER PARK**

  
Jimmy Lahrman, Mayor

ATTEST:

  
Taryn Martin, Town Clerk

CORNERSTONE

*[Handwritten signature]*  
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STATE OF COLORADO )  
                                  )  
COUNTY OF Grand )

ss.

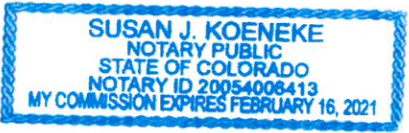
Acknowledged before me this 31<sup>ST</sup> day of August, 2017, by C Clark Lipscomb of Cornerstone Winter Park Holdings, LLC.

WITNESS my hand and official seal.

MY COMMISSION EXPIRES: 02-16-2021

*[Handwritten signature: Susan J Koeneke]*  
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Notary Public

[SEAL]

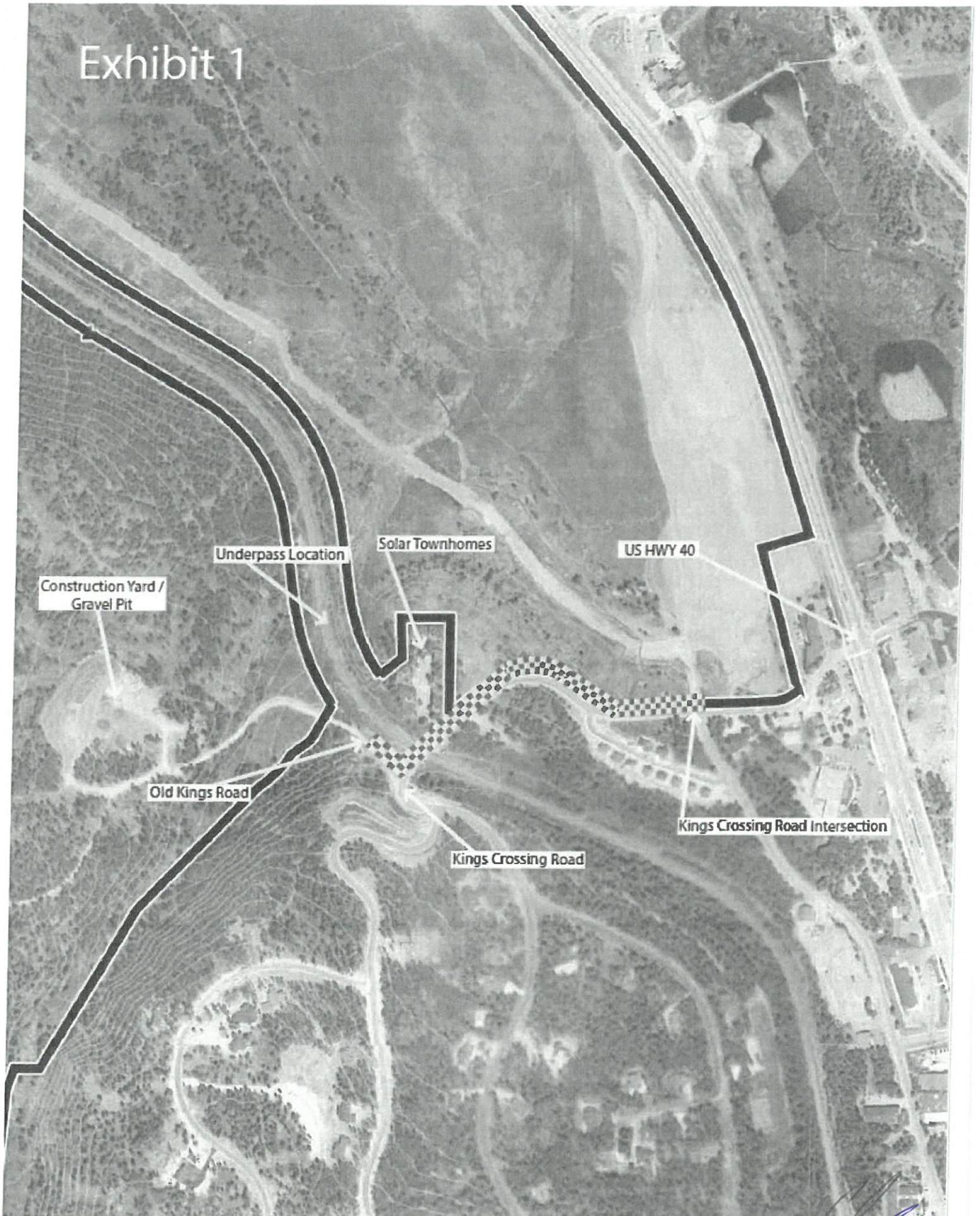


**Exhibit 1**



8/31/2017

# Exhibit 1



Construction Yard /  
Gravel Pit

Underpass Location

Solar Townhomes

US HWY 40

Old Kings Road

Kings Crossing Road

Kings Crossing Road Intersection



**Exhibit 1**  
Temporary Access

Temporary Access Location

King's Crossing Road

Google Earth

100 ft

