

LICENSE AGREEMENT
FOR PRIVATE IMPROVEMENTS IN THE COUNTY RIGHT-OF-WAY
For Mountain's Edge

Schedule No: 3200000740 / east side of McClelland Road, north of Scott Road

This License Agreement ("Agreement") is entered into and made effective this 1st day of August, 2022, by and between OGC RE2, LLC, a Colorado limited liability company, whose mailing address is 455 E. Pikes Peak Avenue, Suite 102, Colorado Springs, CO 80903 (the "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 (the "County" or the "Licensor"). The Licensee and Licensor may also be referred to generally as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, pursuant to Section 43-2-147(1)(a), Colorado Revised Statutes (C.R.S.), the County is authorized to regulate vehicular access to or from any public highway under its jurisdiction from or to property adjoining said public highway in order to protect the public health, safety, and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage, and to protect the functional level of public highways; and

WHEREAS, Licensee is the owner of certain real property located in El Paso County, Colorado, legally described as follows (the "Property"):

A part of the North Half of the North Half of the Southwest Quarter (N1/2 N1/2 SW1/4) of Section 13, Township 12 South, Range 63 West of the 6th P.M., situate in El Paso County, Colorado, more particularly described as follows:

Beginning at the West Quarter Corner of said Section 13;

thence S87°49'24"E along the North line of said N1/2 N1/2 SW1/4, 1833.46 feet;

thence S17°31'18"E, 104.90 feet;

thence S20°22'39"E, 138.52 feet;

thence S36°14'11"E, 202.46 feet;

thence S33°20'14"E, 179.89 feet;

thence S21°49'13"E, 136.76 feet to a point on the South line of said N1/2 N1/2 SW1/4;

thence N87°48'59"W along the South line of said N1/2 N1/2 SW1/4, 2179.90 feet to the Southwest corner of said N1/2 N1/2 SW1/4;

thence N00°15'44"W along the West line of said N1/2 N1/2 SW1/4, 657.01 feet to the Point of Beginning and containing 30.613 acres, more or less.

; and

WHEREAS, the County owns and maintains the public rights-of-way known as Farmhouse Court (to be platted) adjacent to the Property; and

WHEREAS, Licensee desires to obtain access from Farmhouse Court to the Property and use the Licensor's right-of-way for the following purposes: installation of private mail kiosk improvements ("Improvements") and maintenance and repair of same 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 a portion of its right-of-way for the purposes of constructing, maintaining and repairing the Improvements; and

WHEREAS, the Licensee intends to assign the license to the owner of Lot 1 of the Mountain's Edge subdivision upon sale of the lot for the purposes of ongoing maintenance.

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 recitals into this Agreement.
2. **Description and Use of the Licensed Premises.** Licensor hereby grants to Licensee a License upon those portions of the Licensor-owned rights-of-way known as Farmhouse Court generally illustrated in **Exhibit A**, attached hereto, which shaded area depicted on Exhibit A 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. Such maintenance and repair shall be done in accordance with applicable laws and County regulations and shall include snow removal within the Licensed Premises. 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 Licensee, its employees, agents, servants and invitees for any lawful purposes associated with the construction, use, and maintenance of the Improvements, and related purposes for the benefit of the Licensee and the Property.
3. **Installation 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 El Paso County Planning and Community Development and Department of Public Works.

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 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 6** below.

5. Additional License Terms:

- 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 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 Area, Licensor shall have no liability to Licensee for such damages.
- 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 the Licensee.
- 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 valid public purpose including, but not limited to: safety, maintenance, roadway improvement project, 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.
- 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.
- Maintenance. As the Improvements will be a part Licensor's public right of way, Licensee is expected to maintain the Improvements in an acceptable manner. The Licensee intends to assign all associated responsibility for maintenance of the Improvements to the owner of Lot 1 of the Mountain's Edge subdivision upon the sale of the lot. Upon notice of any deficiency in the Improvements, either: a) by Licensor; or b) by its own observation; or c) by any other means, the Licensee, or any successor or

assign, 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, or their successor or assign, 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 the Licensee, or any successor or assign, for such work. Licensee or their successor or assign 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.

- Natural Disasters. Licensor shall not be liable to Licensee or any successors or assigns 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 or any successors or assigns to return the Licensed Premises to its original condition.

6. 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 or any successor or assigns, 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 or their successor or assign, as applicable. 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, or their successor or assign, as applicable, to remove all or a portion of the Improvements from the Licensed Premises at Licensee's sole expense, and the Licensee, or their successor or assign, as applicable, shall restore the Licensed Premises to its original condition to the extent reasonably practicable, ordinary wear and tear excepted.

b. Termination by Licensee. Licensee, or their successor or assign, 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 Licensor. Upon termination by the Licensee, or their successor or assign, of the License on all or part of the Licensed Premises, and if requested by Licensor, the Licensee, or their successor or assign, 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, or their successor or assign, as applicable, 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, Licensor and Licensee, or their successor or assign, as applicable, 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. The Licensee agrees and understands that they commence use of the Licensed Premises in an "AS IS" condition and without any warranties of any kind or nature. It shall be the Licensee's, or their successor's or assign's, as applicable, 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 and their successor or assign shall indemnify and hold the Licensor 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, its contractors', agents', consultants' and/or employees' failure, or any successor's or assign's to the Licensee, as applicable, to comply with the terms of this Agreement or failure to maintain the Licensed Premises in a safe condition, and for use of the Licensed Premises, but only to the extent such damages, losses, costs, expenses, and liabilities are due to or arising from Licensee's, or their successor's or assign's, negligence or willful misconduct, but not as to use by the general public. Nothing in this section shall be deemed to waive or otherwise limit the defense available to Licensor 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 may assign this Agreement and the License granted hereunder one time to the purchaser of Lot 1 in a form reviewed by and acceptable to Licensor. No other or subsequent assignment may be made without the prior written consent of the Licensor, which shall not be unreasonably withheld, conditioned or delayed. The intent of any such assignment made pursuant to this paragraph 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 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 the Licensor to confer on Licensee a usable right to construct, maintain, repair, and replace the Improvements described herein.

12. Right to Inspect. Licensee, and any successors or assigns, shall permit the Licensor to enter upon the Licensed Premises at reasonable times and 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. 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.

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, except for the Licensee's Contractors, Consultants, Employees, and Agents, the right to the performance of this Agreement, to claim any damages or to bring any legal action or other proceeding against the Licensee or Licensor.

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.

Done the day and year first written above.

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: _____
Stan VanderWerf, Chair

ATTEST:

Chuck Broerman
County Clerk & Recorder

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, 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: _____.

Notary Public

APPROVED AS TO FORM:

**OFFICE OF THE COUNTY ATTORNEY
OF EL PASO COUNTY, COLORADO**

By: _____
Assistant County Attorney

LICENSEE:

OGC RE2, LLC

By: *Kelli O'Neil*
Kelli O'Neil, Manager

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 1st day of August, 2022, 2020,

By Kelli O'Neil as Manager of OGC RE2, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: 3/10/2024

Lisa A. Smith

Notary Public

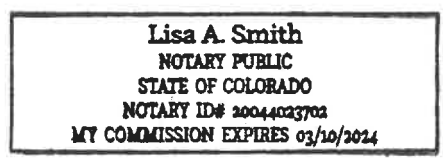


Exhibit A
the "Licensed Premises"

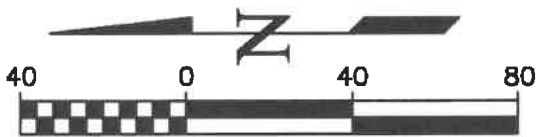
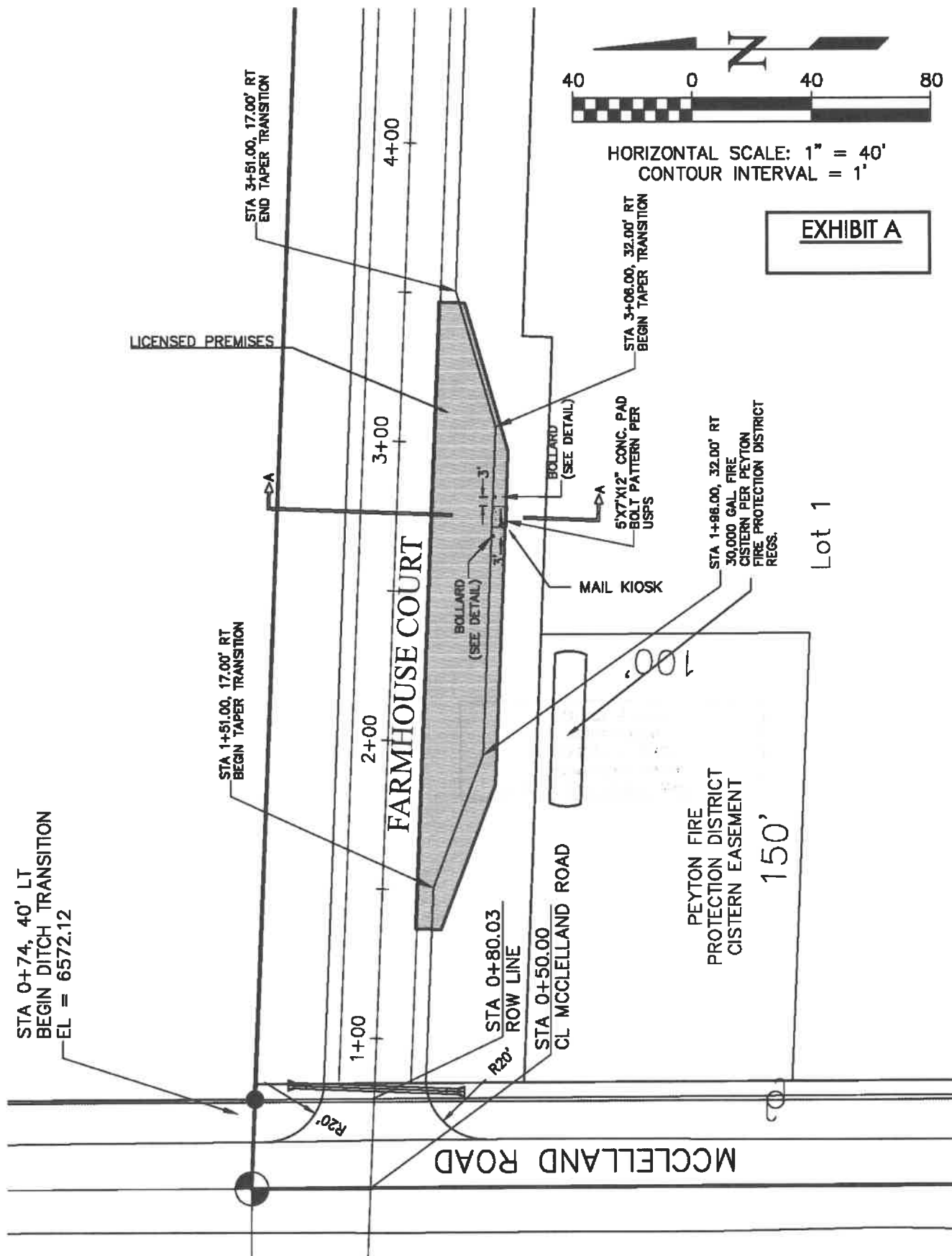


EXHIBIT A