

RESOLUTION NO. 3

SERIES NO. 2020

A RESOLUTION OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE GRANT OF A REVOCABLE LICENSE TO ELK AVENUE PARTNERS LLC TO ENCROACH INTO THE RIGHT-OF-WAY ADJACENT TO ELK AVENUE AND LOTS 1-4, BLOCK 27, TOWN OF CRESTED BUTTE

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, the Town staff has recommended to the Town Council that it grant a revocable license to Elk Avenue Partners LLC to encroach into the right-of-way adjacent to Elk Avenue and Lots 1-4, Block 27, Town of Crested Butte; and


WHEREAS, the Town Council hereby finds that granting a revocable license to grant a revocable license to Elk Avenue Partners LLC to encroach into the right-of-way adjacent to Elk Avenue and Lots 1-4, Block 27, Town of Crested Butte, is in the best interest of the Town and the health, safety and welfare of the residents and visitors of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT:


1. **Findings.** The Town Council hereby finds that granting a revocable license to Elk Avenue Partners LLC to encroach into the right-of-way adjacent to Elk Avenue and Lots 1-4, Block 27, Town of Crested Butte, by installing heat tubing in the sidewalk is in the best interest of the Town and the health, safety and welfare of the residents and visitors of the Town.

2. **Authorization of Mayor.** Based on the foregoing, the Town Council hereby authorizes the Mayor to execute the "Revocable License Agreement" in substantially the same form as attached hereto as **Exhibit "A."**

INTRODUCED, READ AND ADOPTED BEFORE THE TOWN COUNCIL THIS 18th DAY OF February, 2020

ATTEST

Lynelle Stanford, Town Clerk

TOWN OF CRESTED BUTTE

By: 
James A. Schmidt, Mayor

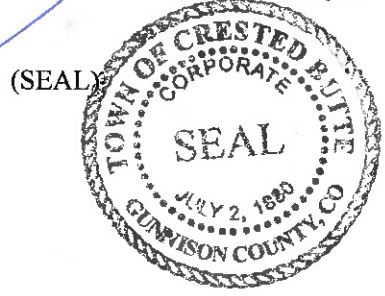


EXHIBIT "A"

Revocable License Agreement

[attach approved form here]

**RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:**

Town of Crested Butte
Attn: Town Clerk
502 Maroon Avenue
Crested Butte, CO 81224

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (this "Agreement") is made and entered into this 6 day of MAY, 2020, by and between the TOWN OF CRESTED BUTTE, COLORADO ("Licensor"), a Colorado home rule municipality with an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 and ELK AVENUE PARTNERS LLC ("Licensee"), P.O. Box 836, Crested Butte, CO 81224-0836.

RECITALS:

- A. Licensee owns the real property described as follows:

Block 27,
Lots 1-4,
Town of Crested Butte,
County of Gunnison,
State of Colorado,

commonly known as 330 Elk Avenue/407 Fourth Street, Crested Butte, Colorado 81224 (the "Premises").

- B. The Premises is bound by that certain public right of way known as Elk Avenue (the "Public Property").

C. Licensee has requested the right to construct and install, and keep and maintain certain improvements in the Public Property.

D. The Town is willing to allow Licensee to keep and maintain such improvements in the Public Property, subject to certain conditions and requirements.

NOW, THEREFORE, for and in consideration of the covenants, terms, conditions and requirements set forth herein, the sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

AGREEMENT:

1. Grant of License. Licensor hereby grants to Licensee and its successors in interest a revocable license (the "License") to keep and maintain the improvements,

which is the heating of the sidewalk via tubing adjacent to Lots 1-4, Block 27, as described in Exhibit "A" (the "Improvements") attached hereto on the Public Property in the location set forth on Exhibit "B" attached hereto.

2. Permit for Construction and Maintenance. Licensee shall obtain permits from the Town pursuant to Chapter 11, Article 2 of the Crested Butte Municipal Code relative to all construction, installation and maintenance activities relative to the Improvements.

3. Term of License; Revocation.

3.1. The License shall exist and continue until the happening of either the following events, which such event shall automatically terminate and extinguish the License:

(a) the Improvements are demolished, removed or damaged by fire or other casualty such that such Improvements cannot be reasonably repaired in their present location; or

(b) the Town Council finds at a regular, public meeting that (i) the Improvements must be removed in order to make the Public Property available for public use or for such other reason as determined by the Town Council in its sole discretion, or (ii) Licensee is in default of this Agreement.

3.2. The License is made subordinate to the right of Licensor to use the Public Property for any public purpose, including, without limitation, public pedestrian uses, surface and subsurface improvements and public utilities. In addition to Licensor's revocation rights set forth in Section 3.1, Licensee agrees that if Licensor subsequently determines to, without limitation, install, modify or change the grade of any street or sidewalk, or to modify, repair or install any underground utility, or to effect any other work in connection with any other public or utility improvement, or to use or occupy the area of the encroachment by the Improvements, then the License hereby authorized must be modified and the Improvements removed completely or otherwise relocated to a location acceptable to Licensor, and the Public Property shall be restored to its pre-existing and/or unobstructed condition to the satisfaction of Licensor at Licensee's sole cost and expense. Licensor's decision as to the necessity of such public use, occupancy or improvements shall be final and binding upon Licensee.

4. Assumption of Risk. Licensee assumes the risk of damage to the Improvements and agrees to repair any damage to the Public Property, and any third party's property, arising from or relating to Licensee's use of the Public Property. Additionally, Licensee assumes all risk of damage to property or injury to persons, including death, in connection, whether directly or indirectly, with the License and the Improvements. In the event of any such damage or injury, Licensee agrees to pay all costs related thereto, including, without limitation, reasonable attorneys' fees.

5. Indemnification. By execution of this License, Licensee, for itself and its successors, hereby agrees to indemnify, defend and hold harmless Licensor, its elected officials, employees, contractors, agents, insurers, insurance pools and attorneys against any and all claims, suits, damages, costs, losses and expenses, including reasonable attorneys' fees, in connection with any personal injury, including death, or property damage, arising out of or connected in any way with, whether directly or indirectly, the License, Licensee's use of the Public Property and the Improvements.

6. Insurance.

6.1. At its sole cost and expense, Licensee shall obtain and keep in force during from the date first written above until the Improvements are removed or relocated from the Public Property "all-risk" property coverage naming Licensee and Licensor as their interests may appear.

6.2 At its sole expense, Licensee shall obtain and keep in force from the date first written above until the Improvements are removed or relocated from the Public Property commercial general liability insurance with a combined single limit of not less than \$2,000,000.00 for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring Licensee and Licensor, including, without limitation, coverage for contractual liability, broad form property damage and non-owned automobile liability, with respect to the Public Property. The insurance shall be noncontributing with any insurance that may be carried by Licensor and shall contain a provision that Licensor, although named as an insured, shall nevertheless be entitled to recover under the policy for any loss, injury, cost or damage to Licensor, or the property of the same.

6.3. All insurance required herein and all renewals thereof shall be issued by companies authorized to transact business in the State of Colorado and rated at least A+ Class X by Best's Insurance Reports (property liability) or otherwise approved by Licensor in writing. All insurance policies shall be subject to approval by Licensor as to form and substance, shall expressly provide that the policies shall not be canceled without 30 days' prior written notice to Licensor and shall provide that no act or omission of Licensor that would otherwise result in forfeiture or reduction of the insurance shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. Licensee may satisfy its obligation under this Section by appropriate endorsements of its blanket insurance policies.

6.4. All policies of liability insurance that Licensee is obligated to maintain according to this Agreement (other than any policy of workmen's compensation insurance) shall name Licensor as an additional insured. Originals or copies of original policies (together with copies of the endorsements naming Licensor as an additional insured) and evidence of the payment of all premiums of such policies shall be made available to Licensor on the date first written above. All public liability, property damage liability and casualty policies maintained by Licensor shall be written as primary policies, not contributing with and not in excess of coverage that Licensor may carry.

6.5. The parties waive all rights to recover against each other, or against the elected and appointed officials, employees, contractors, agents, advisors, attorneys, insurers, insurance pools, shareholders, directors, members, managers, officers, suppliers, agents or servants of each other, for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to this Section or any other insurance actually carried by each of them. Licensee shall cause its insurer to issue an appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with Licensee's operations and Licensor's operations and property.

7. **Licensee Obligations Upon Revocation; Remedies.** Upon notice to Licensee of the Town Council's decision to revoke this License, the Improvements must be promptly removed. In the event that the Improvements are not so removed by Licensee, Licensor may remove the Improvements and restore the location to its original condition at Licensee's sole cost and expense. In such case Licensor shall have no responsibility for damage to the Improvements or Licensee's other property, whether personal or real property, located on Public Property and the Premises. Licensee shall immediately reimburse Licensor such costs and expenses incurred by Licensor in such removal. Licensor shall have the right to make an assessment against the Premises and collect the costs of removal and restoration in the same manner as general taxes are collected under State and local laws. Such rights shall be in addition to any rights available at law or in equity. All remedies may be applied concurrently and not to the exclusion of any other remedy. In the event of any legal action or advice necessary to execute such removal, Licensee shall pay Licensor all reasonable costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees.

8. **Responsibility for Maintenance; Damage to Improvements.** Licensee assumes and accepts sole responsibility for the maintenance and upkeep of the Improvements, which shall be performed only upon receipt of permits from Licensor as required by applicable law. Further, Licensor shall not be liable for any damage to the Improvements caused by Licensor's operations, including, without limitation, snow removal, street or alley maintenance, street or alley repairs and improvements and utility installation, maintenance and repairs.

9. **No Assignment.** This Agreement and the License granted hereunder shall not be assignable or transferrable by Licensee without Licensor's prior written consent. Failure to obtain Licensor's consent to such assignment or transfer as required shall make such assignment or transfer void *ab initio*.

10. **Subject to Laws.** This License is subject to all State and municipal laws as they now exist or may hereafter be amended.

11. **Licensee Representations.** Licensee represents and warrants that: (a) it is duly qualified to do business and is in good standing in the State of Colorado; (b) it has full power and authority to execute, deliver and perform its obligations under this

Agreement; (c) the individual executing this Agreement has the full power and authority to do so; and (d) the Agreement does not violate any other obligation of Licensee.

12. Notices. All notices required pursuant to this Agreement shall be deemed served upon depositing a certified letter, return receipt requested, in the United States mail, addressed to the party being served with such notice at the addresses set forth above, unless a request to mail to a different address is provided in writing to the other party.

13. Prevailing Party. In the event of any dispute between the parties in connection with this License, the non-prevailing party shall pay the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and expenses, incurred in such dispute.

14. Entire Agreement; Amendment. This Agreement represents the entire agreement of the parties respecting the subject matters addressed herein. This Agreement may be amended only in writing by properly executed agreement.

15. Successors and Assigns. The rights and obligations of the parties shall inure to the benefit and burden to the parties' successors and permitted assigns.

16. No Waiver. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

17. Photo-static Copies. For purposes of enforcement of the terms hereof, photo-static reproductions shall be deemed to be originals.

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SIGNATURE PAGE(S) TO FOLLOW]

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Gunnison County, CO

IN WITNESS WHEREOF, the parties have entered into this Agreement by their duly authorized representatives effective as of the date first written above.

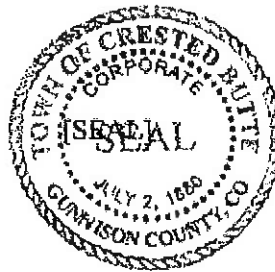
LICENSOR:

TOWN OF CRESTED BUTTE,
a Colorado home rule municipality

By: *James A. Schmidt*
James A. Schmidt, Mayor

Attest:

By: *Lynelle Sanford*
Lynelle Sanford, Town Clerk



LICENSEE:

Elk Avenue Partners, LLC

a Colorado LLC,

By: *Bill Luby*
Name: *Bill Luby*
Title: *member*

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Gunnison County, CO

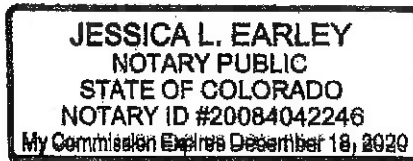
STATE OF Colorado)
COUNTY OF Gunnison) ss.

The foregoing Revocable License Agreement was acknowledged before me this 6 day of May, 2020 by James A. Schmidt, Mayor of the Town of Crested Butte, a Colorado home rule municipality, on behalf of said entity.

WITNESS my hand and official seal.

My commission expires: 12-18-2020

Jessica L. Earley
Notary Public Signature

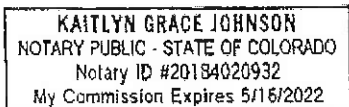


STATE OF Colorado)
COUNTY OF Gunnison) SS.

The foregoing Revocable License Agreement was acknowledged before me this 6th day of May, 2020 by Bill Lacy, MEMBER of Elk Avenue Partners, LLC on behalf of said entity.

WITNESS my hand and official seal.

My commission expires: 5/16/2022



Kaitlyn Grace Johnson
Notary Public Signature

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Gunnison County, CO

EXHIBIT "A"



A 6' x 120' section of the Elk Avenue sidewalk and ~~9'6" x 8'3"~~ ADA ramp, right of way, adjacent to Lots 1-4, Block 27.

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Gunnison County, CO

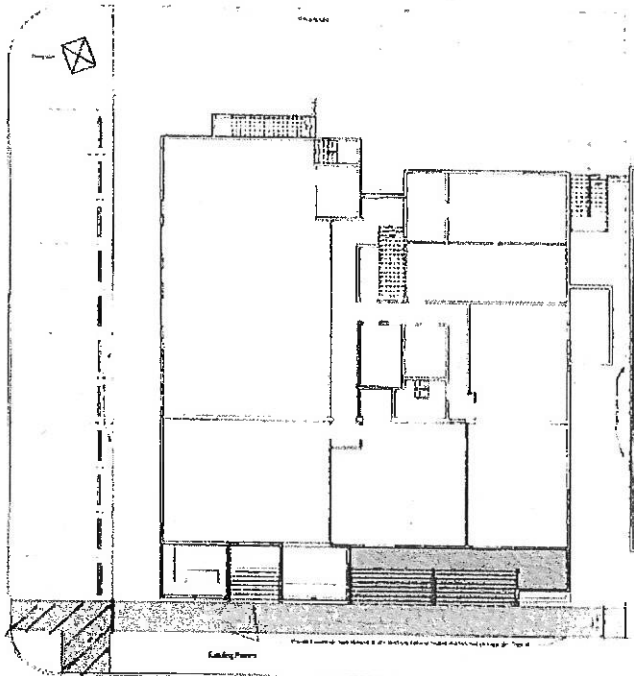
EXHIBIT "B"

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Gunnison County, CO

Exhibit B : Elk Avenue Partners LLC
330 Elk Avenue/407 Fourth Street
Block 27, Lots 1-4
Sidewalk = 6'x120'
ADA Ramp = 9'6" x 8'3" *CL*



out

Elk Ave.

SUNLIT
ARCHITECTURE
P.L.L.C.

1. All work shall be done in accordance with the applicable codes and standards.
2. All work shall be done in accordance with the applicable codes and standards.
3. All work shall be done in accordance with the applicable codes and standards.

04/23/20



Project:
Dontas - Renovation
By: Elk Avenue LLC
Scale: As Shown
Sheet No: A0.01b

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Gunnison County, CO

**RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:**

Town of Crested Butte
Attention: Town Clerk
P.O. Box 39
507 Maroon Avenue
Crested Butte, CO 81224

STATEMENT OF AUTHORITY

Pursuant to C.R.S. § 38-30-172, the undersigned hereby executes this Statement of Authority on behalf of EIK Ave. Partners LLC, a Limited Liab Co, an entity other than an individual, capable of holding title to real property (the "Entity"), and states as follows:

- (1) The Name of the Entity is: EIK Ave. Partner LLC.
- (2) The Entity is a Limited Liab. Co.
- (3) The mailing address for the Entity is Box 880, Crested Butte, Co 81224.
- (4) The name and position of the person authorized by formal Entity action to execute instruments conveying, encumbering or otherwise affecting title to real property on behalf of the Entity is: Bill Lacy, member
[TITLE].
- (5) The limitations upon the authority of the person named above or holding the position described above to bind the Entity are as follows:
unlimited.
- (6) Other matters concerning the manner in which the Entity deals with any interest in real property are: None.

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Gunnison County, CO

EXECUTED this 6th day of MAY, 2020

ELK AVENUE PARTNER
a LIMITED LIABILITY CO.

By: [Signature]
Name: BILL LACY
Title: MEMBER

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing Statement of Authority was acknowledged before me this 6th day of MAY, 2020 by BILL LACY, MEMBER of ELK AVENUE PARTNER, a LIMITED LIABILITY CO. on behalf of said entity.

Witness my hand and official seal.
My commission expires: 5/16/2022.

KAITLYN GRACE JOHNSON
NOTARY PUBLIC - STATE OF COLORADO
Notary ID #20184020932
My Commission Expires 5/16/2022

[Signature]
Notary Public